



STATE OF NEW JERSEY

In the Matter of Nicolas Monaco, *et al.*
County Correctional Police
Lieutenant (various), various
jurisdictions

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2022-3186, *et al.*

Examination Appeals

ISSUED: September 21, 2022 (ABR)

Nicolas Monaco (PC4822C), Morris County; Anthony Porcella, Michael Sadeghian and Michael Donlon (PC4820C), Middlesex County; Raymond Paul and Vanessa Howard (PC4821C), Monmouth County; Patrick Toomey (PC4817C), Hudson County; Stephanie Grant (PC4812C) Atlantic County; James Lapp and Edward Romero (PC4813C), Bergen County appeal the promotional examination for County Correctional Police Lieutenant (various). These appeals have been consolidated due to common issues presented by the appellants.

The subject examination was administered on May 26, 2022, and consisted of 70 multiple choice questions. It is noted that during the test administration, candidates were provided with two booklets: Booklet A (County Correctional Police Lieutenant Supplemental Examination Material) and Booklet B (2022 County Correctional Police Lieutenant Examination). Booklet A contained stimulus material and Booklet B contained the exam questions.

An independent review of the issues presented on appeal has resulted in the following findings:

Question 8 asks which of four statements is false according to *N.J.A.C. 10A:31-9.5*. The keyed response is option a, “whenever chemical or natural agents are used as a means of control, a report shall be submitted to the shift supervisor which provides the reason(s) for the use of chemical or natural agents and the results

achieved from such use.” Paul selected option c, “[c]hemical and natural agents shall be safely stored, legibly labeled to show the chemical or natural agent name and expiration date, and properly inventoried to ensure security and an adequate unexpired supply.” Paul argues that the question should be invalidated or that his response should be double keyed with option d. However, the Civil Service Commission (Commission) observes that because the question asked “which statement is **FALSE?**” and option c is a true statement lifted verbatim from *N.J.A.C. 10A:31-9.5(e)*, it is not the best response to Question 8 (emphasis in original).¹ Conversely, option a is a false statement, as *N.J.A.C. 10A:31-9.5(b)* provides that “whenever chemical or natural agents are used as a means of control, a report shall be submitted to the *adult county correctional facility Administrator*,” rather than to the shift supervisor. Accordingly, Question 8 is properly keyed.

For Question 10, Toomey selected the keyed response. Therefore, his appeal of this question is moot.

Question 26 presents a scenario involving a fight between three inmates in a housing unit. The prompt states that “CO Rome called a code purple, and the probe and response teams arrived to deescalate the situation. However, the situation intensified and all of the inmates in the housing unit refused to lock in their cells and began to destroy property in the dayroom.” It further states that the examinee, as the shift commander, is notified of the situation and asks what action the examinee should direct officers to take at this point. The keyed response is option a, to “[l]eave the dayroom area to safely plan next steps.” Monaco, Porcella, Sadeghian and Lapp argue that the best response is option b, to “[d]eploy O.C. spray to gain control of the inmates.” Romero argues that the best response is option c, to “[c]all for additional officers to assist.” Monaco, Porcella and Sadeghian argue that O.C. spray should be deployed because Title 10A of the New Jersey Administrative Code states that non-deadly force can be used to prevent property damage and such action would help prevent further damage to the housing unit and restore inmate safety. Porcella and Sadeghian add that *N.J.A.C. 10A:31-8.18(a)(5)* also permits the use of non-deadly force to quell a riot or disturbance, and he maintains that using chemical agents to gain control of the unit would end the disturbance immediately. Porcella asserts that withdrawing officers would allow inmates to continue destroying the unit. Sadeghian avers that the question, as written, does not indicate that inmates are being violent towards staff, and he expresses concern that withdrawing officers would give the inmates time to make better weapons or barricades and could lead to the inmates developing a mob mentality. Lapp argues that because the situation is a riot and the officers needed to take control of the situation are already present due to the code purple activating probe and reaction teams, authorizing the use of O.C. spray is the best answer. Lapp observes that the supplemental materials do not mention a larger response to a situation and he maintains that it is never prudent to exit a unit when

¹ Similarly, options b and d are lifted verbatim from *N.J.A.C. 10A:31-9.5* and therefore are not the proper responses to Question 8.

one has the means to take control of it, as withdrawing would give the inmates more time to formulate a plan and make weapons. Romero avers that because inmates are not attacking staff, the best response is request additional officers to assist, as removing officers would give the inmates time to cause additional property damage, arm themselves and devise a plan to resist the response team's control and attack and injure officers. Romero further presents that *N.J.A.C. 10A:31-7.1(b)* provides that all measures shall be taken to maintain effective security and restore normal conditions as expeditiously as possible and that *N.J.A.C. 10A:31-7.5(k)* states that if an incident is considered to be a riot, back up support shall be obtained from local law enforcement authorities. The Division of Test Development, Analytics and Administration (TDAA) contacted two Subject Matter Experts (SMEs) who have knowledge regarding the performance standards and requirements of the job. The SMEs assert that there is a need to ensure that staff are adequately prepared when responding to a situation like this and that here, with the situation escalating, there is a particular need to ensure that the probe and reaction teams have the correct equipment to safely respond. The SMEs proffer that leaving the dayroom area allows for safe planning, proper equipping of staff and an opportunity for non-participants to retreat from the incident. Conversely, they maintain that deploying O.C. spray without allowing those not involved to retreat would be a misuse of force. The SMEs also proffer that, based on applicable use of force guidelines, high-volume O.C. delivery systems should not be used unless de-escalation techniques are attempted and prove to be unsuccessful. TDAA avers that, in accordance with the SMEs' rationale, option a is the best option. TDAA also submits that with two similar incidents in housing units at correctional facilities in the State of Michigan, the prudent course of action was to withdraw officers from the housing units to safely plan and execute the deployment of an emergency response team. See Paul Egan, *Mich. Inmates Gain Control of Housing Unit, Cause Extensive Damage*, Corrections1 by Lexpol, Sept. 14, 2020, <https://www.corrections1.com/riots-and-crowd-control/articles/mich-inmates-gain-control-of-housing-unit-cause-extensive-damage-BUILKUUpC1kT38gaR/>. The Commission agrees that, based upon the rationales articulated by TDAA and the SMEs, and the two real-world scenarios presented, the keyed response is the best response to the scenario presented in Question 26.

Question 28 presents a scenario where the examinee is completing a tour and stops to speak with a corrections officer who is supervising inmates in the dayroom area of a housing unit. The corrections officer complains to the examinee about having to work extra hours due to staff shortages. The question then asks for the best way to handle the situation. The keyed response is option c, to quietly tell the corrections officer that you will speak with her when inmates are not present. Howard argues that the best response is option a, to empathize with the corrections officer about the situation. In this regard, Howard notes that Booklet A indicated that the mental health of staff and inmates had been a major focus of the facility and she maintains that the officer's statement was indicative of a mental health concern which should be addressed immediately by empathizing. Howard contends that waiting to address the

issue could place the officer in danger because it may lead to mental illness symptoms being ignored. The Commission finds that Question 28 is properly keyed. In this regard, having inmates hear that there is a staff shortage could create a security risk. As such, it is imperative to address this situation privately where inmates cannot hear the discussion. Doing so would also allow the examinee to explain to the officer that she shouldn't make complaints in front of the inmates.

Question 33 states that while inmates were in a housing unit's dayroom area, Inmate Zapata approached Sergeant Mitchell and said he has been verbally and physically abused by his cellmate over the past several weeks. Inmate Zapata does not have any visible injuries, but does seem to be genuinely afraid. Sergeant Mitchell notifies the examinee of the situation and asks the examinee to consider which of the following four actions should be taken:

- I. Ensure the housing unit is secured
- II. Have Inmate Zapata seen by medical
- III. Have Inmate Zapata and his cellmate questioned privately
- IV. Ensure Sergeant Mitchell documents the incident

The keyed response is option d, all four options should be taken. Porcella, Lapp and Romero argue that option c, that only actions II, III and IV should be taken, is the best response to Question 33. Porcella avers that the unit should not be secured and the aggressor should not be removed until there is an investigation and the allegations are proven to be true. Lapp and Romero argue that securing the unit is unnecessary, as there is no reason to punish the rest of the inmates and have them lock in for a simple assault of one inmate by another inmate. Romero also contends that there is no immediate danger or emergency, as the alleged incident happened in the past and Inmate Zapata is being taken to the medical unit and out of the way of any immediate peril. TDAA and the SMEs proffer that for confidentiality and security purposes, the unit should be secured. The SMEs observe that doing so protects officer and inmate safety alike and permits the investigative team to investigate the allegations privately and with minimal disruption to operations. Therefore, TDAA maintains that the keyed response is the best response. The Commission agrees with this assessment and therefore finds that Question 33 is correct, as keyed.

Question 38 indicates that an inmate complains to a sergeant that her written medical complaints have not been addressed and that she is afraid that her health is at risk. The question then asks what the best way is for the sergeant to handle the situation. The keyed response is option c, to "[e]nsure the inmate's medical complaints are addressed by the medical unit as soon as possible." Paul selected the keyed response, therefore his appeal is moot. Donlon argues the best response is option d, to "[a]ssure the inmate that medical complaint are reviewed in a timely manner and are addressed in the order of medical priority." Howard and Romero argue that the best response is option b, to "[a]sk the inmate why she feels her health is at risk, so the sergeant can relay the information to the medical unit." Donlon

asserts that option b is the best answer because the question does not provide information about the type or timing of the inmate's medical complaints and that in accordance with *N.J.A.C. 10A:31-13.12*, her written complaints would have been received by qualified medical personnel, who would schedule her for treatment. As such, Donlon avers that such a statement is the best response. Howard asserts that asking the inmate why she believes her health is at risk allows a County Correctional Police Lieutenant to see if the medical unit needs to be notified immediately about a serious condition like chest pains or if it is something less time-sensitive like a splinter. Further, Howard presents that making such an inquiry would allow the supervisor to assess if there may be a custodial issue like a threat from another inmate that is the true source of the inmate's complaint. Romero maintains that option b is the best response because the inmate has submitted multiple requests and it is important to address the concerns, in case there really is a serious issue that the medical department needs to be made aware of immediately. The Commission finds that the question is correct as keyed. In this regard, option d simply pays lip service to the inmate's complaints and does nothing to verify that the medical unit is aware of and adequately addressing the inmate's health issues. Option b is an inferior option to option c, as it is more passive and does not ensure that the medical unit will actually review the inmate's complaints.

Question 39 presents that two corrections officers conducting routine cell searches started to feel dizzy and nauseous after leaving one cell. A sergeant reports this situation to the examinee. The prompt then asks which of the three following actions should the examinee ensure is/are being taken:

- I. Have the officers seen by medical
- II. Secure the cell the officers just searched
- III. Have the inmates assigned to the cell that was just searched escorted to pre-hearing detention

The keyed response is option b, I and II only. Sadeghian avers that question is flawed because it does not provide an option of strip searching inmates or provide a response that adequately addresses the actions or placement of the inmates while an investigation begins. Therefore, Sadeghian argues that the question should be stricken or that options b and d should be double keyed as correct responses. The Commission observes that Sadeghian does not appear to dispute that having the officers seen by medical or securing the subject cell are appropriate actions. Sadeghian's proffered remedies are inconsistent here, as a double key of b and d would be to accept that option III is both inappropriate and appropriate, while striking the question would be to say that the question is invalid, even though there was an option which allowed candidates to select only the two actions that were correct among those listed. Since there was an option to select actions I and II only, the Commission finds that Question 39 is correct as keyed.

Question 40 states that Inmate Samson was a medium-security inmate who was reclassified as a maximum-security inmate and moved to a different Housing Unit South. It then asks examinees to consider, based upon the General Inmate Information provided in Booklet A which of the following items could explain why Inmate Samson was reclassified:

- I. Changes in Inmate Samson's behavior
- II. Facility rule violation committed by Inmate Samson
- III. Changes in availability of cells

The keyed response is option b, I and II only. Sadeghian argues that the best response is option d, all of the above. In this regard, he argues that statement III is a correct choice. However, the Commission observes that the General Inmate Information section in Booklet A states that “[i]nmates can be reclassified for changes in behavior or violating facility rules/procedures.” Therefore, the Commission finds that Question 40 is correct as keyed.

Question 43 provides that while speaking to Sergeant Dixon in his office, the examinee observes that the papers in the printer are tickets for a concert that he is going to this weekend. It indicates that this is the first time the examinee has encountered Sergeant Dixon using office supplies for personal use and it asks for the best way to handle the situation. The keyed response is option c, to “[g]ive Sergeant Dixon a verbal warning not to use the printer for personal use again.” Lapp argues that the best response is option d, to “just document the incident so there is a record if Sergeant Dixon uses office supplies for personal use again.” In this regard, Lapp maintains that supervisory and management training provide that every incident should be documented, even when giving a verbal reprimand. Lapp avers that the failure of the keyed response to mention documenting the verbal reprimand makes it inappropriate and renders option d the better answer. TDAA and the SMEs indicate that documenting a verbal warning is not a standard practice at county correctional facilities, though TDAA acknowledges that some supervisors may prefer to document a verbal warning. The Commission observes that option d has the examinee document the incident without reminding Sergeant Dixon that he cannot use office supplies for personal purposes. Conversely, option c has the examinee convey the issue to Sergeant Dixon in an effort to correct the problematic conduct. Given that option c most directly and effectively addresses and attempts to correct the improper behavior, the Commission finds that Question 43 is correct as keyed.

Question 46 provides that Inmate Brennan deliberately clogged his toilet so that it flooded and caused a disruption. When asked to explain, the inmate proffered that he had been mistreated by staff due to his controversial beliefs and that this was his form of protest. The prompt then asks the examinee, based on the information provided, which of the following four “actions are **NOT** appropriate to take at this point” (emphasis in original):

- I. Place Inmate Brennan in Protective Custody.
- II. Charge Inmate Brennan with a disciplinary infraction.
- III. Explain to Inmate Brennan that he should keep his controversial beliefs to himself for his own safety.
- IV. Interview Inmate Brennan in a secure location and ask for specific examples of mistreatment and have him document those incidents.

The keyed response is option b, “I and III only.” Grant argues that the best response is option d, “II and IV only.” However, the Commission observes that Grant’s appeal demonstrates that he failed to recognize that the question asks which “actions are **NOT** appropriate to take at this time” rather than for which actions are the most appropriate among those listed. Accordingly, the Commission finds Question 46 is correct as keyed.

Question 47 indicates that Lieutenant Catlin, who is normally diligent and does well at her job, has been acting in uncharacteristic ways, such as arriving to work late, appearing fatigued, and being more reserved. The prompt then states that the examinee, who is close to Lieutenant Catlin, casually asks her if she is doing alright. She responds that she and her spouse have been fighting and are considering divorce. The following day, she comes in with a few cuts on her face and bruises on her arms and tells the examinee that she fell from her hammock. The question then asks what action “should you **NOT** take at this point?” (emphasis in original). The keyed response is option c, to tell Lieutenant Catlin that she can tell you anything and you promise to keep it confidential. Grant selected the keyed response, therefore his appeal is moot. Porcella argues that option a, to “[e]ncourage Lieutenant Catlin to go to a supervisor or the employee assistance program,” is the action should not be taken at this point, as it would be inappropriate to push the situation off to another supervisor and does not offer any current guidance for addressing her current situation. Conversely, Porcella argues that the information could be kept confidential unless there is substantial evidence that the marks and bruises are indeed from Lieutenant Catlin’s husband and not falling out of a hammock. The SMEs aver that it is not appropriate to promise Lieutenant Catlin confidentiality because if she conveys information about abuse or violence, the examinee would have a legal obligation to report it. Conversely, they proffer that the three other listed options would be reasonable actions to take. Therefore, the SMEs and TDAA aver that Question 47 is correct as keyed. The Commission agrees with this assessment. In this regard, it observes that the overall goal is to assist Lieutenant Catlin as much as possible. Ideally, the examinee’s outreach will either lead Lieutenant Catlin to seek assistance or to at least share more information about her situation. Encouraging her to turn to those with additional resources and expertise to assist her, such as a supervisor or an employee assistance program, is an appropriate response and not an improper shifting of responsibility to others. Options b and d present ways to get as much information from Lieutenant Catlin as possible, without putting the examinee in a bind if she shares information about abuse or violence. Since Question 47 asks

for the action that should not be taken and option c is problematic because of the confidentiality promise, the Commission finds that Question 47 is correct as keyed.

Question 51 states that the examinee has observed CO Bastardo talk harshly to inmates in the Disabled Housing Unit on a few occasions and asks for the best way to handle the situation. The keyed response is option a, to talk to Sergeant Dixon about these observations. Donlon selected the keyed response. Therefore, his appeal of this item is moot. Lapp and Romero argue that the best response is option b, to document these observations. Lapp maintains that since the examinee is a supervisor who is witnessing these incidents, the examinee must write it up. He also avers that the reasoning behind the keyed response is inconsistent with the keyed response to Question 57, which involved the examinee, as a shift commander, preparing an overtime report and finding that an officer had submitted an overtime slip which was inconsistent with the examinee's personal observations. Lapp submits that Question 57 has the examinee document the incident, rather than delegating it to a sergeant and that the same should hold true with Question 51. Romero contends that if this were a first occurrence, it would be appropriate to speak to Sergeant Dixon about it, but that because it has become an ongoing issue, it is no longer something that can be delegated. Further, Romero maintains that supervisory and leadership courses commonly teach that delegating personnel issues that one personally witnesses shows poor leadership. The SMEs maintain that the best response for the scenario presented in Questions 51 would be to directly address the incident with the CO. However, because it is not a choice presented in Question 51, they indicate that option a, talking to Sergeant Dixon, is the best response. TDAA similarly avers that option a represents the best answer among those presented. The Commission agrees with the position of the SMEs and TDAA. This scenario involves a repeated problematic behavior by CO Bastardo which needs to be addressed. Option b does not suggest that any action would be taken to correct the behavior. Conversely, option a contemplates a discussion with CO Bastardo's direct supervisor about what was observed and an evaluation of the course of action in response to their observations. Such a discussion does not mean that the examinee is shifting all responsibility to Sergeant Dixon or showing weak leadership. For these reasons, option a is a superior response to option b and the best option among those presented in response to Question 51. Therefore, the Commission finds that Question 51 is correct as keyed.

Question 52 presents a scenario where an advocacy group protesting outside has not complied with initial instructions to disperse and asks which among four orders should be given by the shift commander, including, in relevant part:

- II. Immediately contact Master Control, alerting them to the situation and request backup.
- III. Provide clear and audible warnings of the consequences for non-compliance.
- IV. Announce final instructions clearly and immediately begin carrying those out to disperse the crowd.

The keyed response is option b, “II and III only.” Monaco, Grant and Romero argue that option c, “II, III and IV only,” is the best response. Monaco and Romero assert that all three of these steps are necessary to promptly handle the situation. Romero proffers that failing to act after the prior warnings will lead the crowd to believe that they can act without repercussions and become more dangerous. Grant maintains that per Attorney General Use of Force Guideline 3.8.1., prior to using force against people in a crowd, it is necessary to provide clear warnings in a manner that can be heard by the crowd, state the consequences of refusing to comply with a mandatory directive, and give them a reasonable opportunity to comply. Grant avers that since the crowd was not complying with the previous instructions and a reasonable time has passed, the only non-biased way to address the crowd is to announce final instructions clearly and immediately begin carrying them out. She adds that she would also have backup units assembled, and notify Master Control that final orders are being given and that if the crowd does not comply it will be dispersed immediately. As such, Grant argues that option c was the best response. Initially, the Commission notes that the appellants do not dispute that actions II and III are appropriate responses. Rather, the material issue is whether action IV, to announce final instructions clearly and immediately begin carrying those out to disperse the crowd, is also a necessary step, given the information provided in Question 52. The Commission finds that action IV is not an appropriate action to take. Critically, although the crowd has already been instructed to disperse, the prompt to Question 52 does not state that they have been given any warnings about the consequences for non-compliance. Therefore, per Attorney General Use of Force Guidelines 3.8.1(b) and (c), it is imperative to advise the crowd of consequences of refusing to comply with a mandatory directive, including arrests and possible use of force, and to give the crowd a reasonable opportunity to comply. Accordingly, the Commission finds that Question 52 is correct as keyed.

Question 54 provides that the examinee has assisted in making a staff schedule for September, which has been approved with several overtime positions budgeted. The prompt indicates that the examinee has just learned that a long-delayed construction project is now slated to begin in September. As a result, several portions of the facility will be shuttered until late October. The question then asks what the examinee should do, given that the September schedule has already been budgeted and approved. The keyed response is option a, to eliminate all positions which are not needed during the construction period. Sadeghian and Grant argue that the best response is option c, to “eliminate only the overtime positions that are effected in those areas of the facility during construction.” In this regard, they aver that officers cannot be forced to take off their regular shifts because construction is happening in their assigned facility areas. Rather, these officers would be reassigned to another part of the facility and only the overtime positions in areas of the facility under construction would be impacted. The SMEs state that because the narrative indicates that the project will shut down several areas of the facility, it will impact posts manned by officers on their assigned shifts and make them unnecessary during the

pendency of the project. The SMEs maintain that eliminating only the overtime positions would not be effective or prudent. The SMEs further indicate that the extra staff would be used in other positions or posts at the facility. TDAA, relying on this rationale, contends that option a is the best response to Question 54. The Commission finds that the foregoing rationales from the SMEs and TDAA support the conclusion that Question 54 is correct as keyed.

Question 58 presents a scenario where a sergeant on a routine tour walks past an inmate's cell, believing that all of the cell doors were locked. However, an inmate opens her cell door and jumps on the sergeant. The question then asks what the sergeant should do next. The keyed response is option d, the sergeant should use necessary force to defend himself. Romero selected the keyed response, therefore his appeal is moot. Paul avers that the question does not state that the inmate is attacking or striking the sergeant, just jumping on him. Romero also maintains that the New Jersey Attorney General's Use of Force Policy requires the use of verbal commands prior to any use of force. Paul avers that because the question has insufficient detail about the situation, it should be removed or double keyed with option a, to order the inmate to stop attacking him. Lapp argues that all listed responses are correct and he states that with medical emergencies and physical altercations, the first thing to do is option b, to yell for assistance from custody staff. The SMEs assert that the sergeant using necessary force to defend himself here is permissible under the Attorney General's Use of Force Policy. They note that because the inmate has already chosen to attack the Sergeant, ordering her to stop would likely be ineffective. Additionally, while yelling for assistance may help, it will not secure the sergeant's safety in the immediate moment and the sudden attack may not even give the sergeant an opportunity to call for assistance. Further, the SMEs state that while attempting to withdraw from the inmate's assault is an option, utilizing necessary force to halt the attack is the best option in that moment. The Commission observes that Core Principle Two of the Attorney General's Use of Force Policy (April 2022 Version) provides, in pertinent part:

Force shall only be used as a last resort when necessary to accomplish lawful objectives that cannot reasonably be achieved through verbal commands, critical decision making, tactical deployment or de-escalation techniques. Force shall never be used as a retaliatory or punitive measure.

See State of New Jersey, Office of the Attorney General, Use of Force Policy (April 2022 Version), <https://www.nj.gov/oag/force/docs/UOF-2022-0429-Use-of-Force-Policy.pdf>. Guideline 2.1(d) provides that officers are permitted to utilize force to prevent physical harm to the officer or to another person. Guideline 2.3 provides, in pertinent part.

Officers shall exhaust all other reasonable means to gain compliance before resorting to force, if feasible. Thus, if a safe alternative would achieve law enforcement's objective, force shall not be used. Officers shall, therefore, use verbal commands, critical decision making, tactical deployment and de-escalation techniques to gain voluntary compliance, when feasible. Importantly, officers shall never engage in unnecessary, overly aggressive, or otherwise improper actions that create a situation where force becomes necessary.

It is important to emphasize that the situation presented is one in which an inmate has jumped on the sergeant. Regardless of intent, the inmate's actions have created a reasonable risk of harm to the sergeant and the sergeant must take reasonable actions to ensure his own safety. It also bears noting that *N.J.S.A. 2C:12-1(a)* provides, that a person is guilty of a simple assault if the person:

- (1) Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or
- (2) Negligently causes bodily injury to another with a deadly weapon; or
- (3) Attempts by physical menace to put another in fear of imminent serious bodily injury.

Additionally, *N.J.S.A. 2C:12-1(b)(5)(a)* provides that a person is guilty of aggravated assault if the person commits a simple assault, as defined by *N.J.S.A. 2C:12-1(a)(1)-(3)*, on any law enforcement officer acting in the performance of the officer's duties while in uniform or exhibiting evidence of authority or because of the officer's status as a law enforcement officer. Here, since the inmate has, without provocation, made physical contact with the sergeant in a manner that at least puts him in reasonable fear of bodily injury, it is fair to expect examinees to understand that verbal commands are not a "feasible" or safe alternative to the use of force. As such, under the circumstances, the keyed response is a better choice than option a, for the sergeant to order the inmate to stop attacking him. Further, since it is unclear whether custody staff would be able to hear the sergeant or how quickly they would be able to provide him with assistance, it makes option b an inferior choice. Therefore, the Commission finds Question 58 is correct as keyed.

Question 60 states that an inmate is refusing to lock in his cell in his housing unit while all other inmates are locked in. After a corrections officer gives him multiple orders to lock in, the inmate starts undressing in the dayroom. The question then asks what the examinee should do first, upon being notified of the situation. The keyed response is option a, to report to the housing unit. Monaco, Toomey, Grant and Lapp argue that the best response is option c, to form an extraction team to remove the inmate from the unit, while Paul and Howard argue that the best response is option d, to tell the corrections officer to order the inmate to stop undressing. The SMEs assert that the circumstances detailed in the scenario call for an attempt at de-

escalation before assembling an extraction team, rather than the immediate deployment of an extraction team. In this regard, the SMEs observe that the Attorney General's Use of Force Policy generally mandates an attempt at de-escalation before force is utilized and they maintain that having the examinee, as a supervisor, respond to the scene may allow for a de-escalation of the incident without the use of force. The SMEs also observe that doing so would not prevent the assembly of an extraction team to remove the inmate if the inmate remains non-compliant. The SMEs also note that having the examinee report to the scene will allow the examinee to observe the situation and determine the appropriate action to be taken. Given these considerations, TDAA maintains that the keyed response is the best response, as it is the most likely to prevent unnecessary use of force. The Commission finds that under the circumstances, forming an extraction team to remove the inmate from the unit is an action that should not be taken until the supervisor reports to the scene and assesses the situation. As to having the corrections officer order the inmate to stop undressing, the Commission finds that this action would be insufficient. Since the inmate has refused to listen to the corrections officer's repeated orders to lock in to this point, there is no reason to believe that the inmate will listen to other orders from that same officer. As such, it is far more prudent to have a supervisor report to the scene and assess what action should be taken next.

CONCLUSION

A thorough review of the appellants' submissions and the test materials reveals that the appellants' examination scores are amply supported by the record, and the appellants have failed to meet the burden of proof in this matter.

ORDER

Therefore, it is ordered that these appeals be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 21ST DAY OF SEPTEMBER, 2022

Dolores Gorczyca

Dolores Gorczyca
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