



## STATE OF NEW JERSEY

In the Matter of Mack Ragsdale,  
Atlantic City, Department of  
Municipal Utilities Authority

DECISION OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2022-171  
OAL Docket No. CSV 08796-21

ISSUED: November 6, 2024

The appeal of Mack Ragsdale, Electronic Systems Technician 2, Atlantic City, Department of Municipal Utilities Authority, removal, effective July 6, 2021, on charges, was heard by Administrative Law Judge Elaine B. Frick (ALJ), who rendered her initial decision on September 6, 2024. Exceptions were filed on behalf of the appointing authority and replies were filed on behalf of the appellant.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions and reply, the Civil Service Commission (Commission), at its meeting on October 16, 2024 adopted the ALJ's Findings of Facts in the initial decision. However, it did not agree with his recommendation to modify the removal to a 10 working day suspension. Rather, the Commission dismissed all charges and reversed the removal.

Upon its *de novo* review of the ALJ's thorough and well-reasoned initial decision as well as the entire record, including the exceptions and replies filed by the parties, which do not require extensive comment, the Commission agrees with the ALJ's findings as they are reasonable and based on her credibility determinations which were clearly defined. In this regard, the Commission acknowledges that the ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. *See Matter of J.W.D.*, 149 N.J. 108 (1997). "[T]rial courts' credibility findings . . . are often influenced by matters such as observations of the character and demeanor of the witnesses and common human experience that are not transmitted by the record." *See also, In re Taylor*, 158 N.J. 644 (1999) (quoting *State v. Locurto*, 157 N.J. 463, 474 (1999)). Additionally, such credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear. *Id.* at 659 (citing *Locurto, supra*). The Commission appropriately gives due deference to such determinations. However,

in its *de novo* review of the record, the Commission has the authority to reverse or modify an ALJ's decision if it is not supported by sufficient credible evidence or was otherwise arbitrary. See *N.J.S.A. 52:14B-10(c)*; *Cavalieri u. Public Employees Retirement System*, 368 *N.J. Super.* 527 (App. Div. 2004).

In her initial decision, the ALJ found all of the witnesses credible. However, the ALJ noted that most of the testimony of the appointing authority's witnesses was their "understanding" of events and information, based mainly upon hearsay statements made to them or what they gathered in terms of hearing others speak about circumstances. The ALJ also noted that the appointing authority failed to present any evidence to support its claim that the appellant's actions caused extensive damage and/or costs. Therefore, the ALJ dismissed all but one of the charges. The ALJ's explanation as to her determinations were well thought out and clearly supported by the testimony she included in the initial decision. Despite finding that the appellant had requested blueprints or schematics of the wiring in the building; and he had expressed reservations about his ability to cut the requested wires with the information provided, to Claude Smith, who assigned the work; the ALJ upheld the charge of neglect of duty, as the appellant had acknowledged that he accidentally cut both wires. Moreover, the ALJ noted that no witness for the appointing authority could identify who had allegedly told the appellant not to cut the wire and both the appellant and his assistant denied that he was told not to cut any wire. Based on the ALJ's findings, there is no indication that the appellant neglected his duties. Rather, the ALJ explicitly found that the appellant took steps to mitigate any accidental damage, by requesting schematics, which were not provided, and indicating to his superiors that he was uncomfortable with the assignment. Therefore, the Commission finds that the appointing authority has also fallen short of its burden to sustain this charge as well.

In its exceptions, the appointing authority argues that the Commission did not have the jurisdiction to accept the appellant's appeal.<sup>1</sup> Specifically, it argued that the timing of events committed by the appellant occurred during the time the Commission's authority was not in effect for Atlantic City employees pursuant to the

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<sup>1</sup> The appointing authority had requested summary decision on the issue of jurisdiction and the Last Chance Agreement (LCA) controlling this matter. However, the ALJ had found that there were issues of fact concerning whether the LCA was still valid and controlling, as the former Executive Director asserting his recollection that the LCA had been vacated by the President of the Board of Directors at some point after 2017. The ALJ also deemed a disputed fact the appointing authority's contention that it afforded the appellant a hearing simply as a courtesy and Civil Service protections should not be considered since the events in question occurred during the time the Commission's authority was not in effect for Atlantic City employees. In that regard, when the appointing authority issued, in pertinent part, the major disciplinary notice to the appellant in December 2020, it noted that the discipline was pending a hearing, for which he would be notified of the date and time. The appointing authority had doubts and concerns about conducting such a hearing at a time that might occur after Civil Service protections resumed for Atlantic City employees. Additionally, the ALJ noted that the appellant disputed the facts underlying the alleged behavior that caused the appointing authority to pursue discipline. Therefore, the ALJ denied the motion for summary decision. The appointing authority's request for interlocutory review to the Commission was not accepted for review.

Municipal Stabilization and Recovery Act (MSRA). The appointing authority notes that the MSRA returned jurisdiction of it back to the Commission on June 24, 2021, one day before the appellant's "name-clearing hearing." The appointing authority argues that since the appellant had been disciplined and entered into an LCA, and been disciplined again, prior to that date, the Commission does not have jurisdiction, and instead, the LCA should control. The appointing authority argues that if not for its "courtesy" in providing the appellant with a "name-clearing hearing," the Commission would not have had jurisdiction as it would have all occurred prior to June 24, 2021. The Commission disagrees. Pursuant to the June 24, 2021 amendment to the MSRA, Civil Service protections became applicable to actions taken after that date. Since the appellant's termination letter provided that his removal was effective *July 6, 2021*, the MSRA presents no jurisdictional bar.

Finally, with regard to the appointing authority's arguments concerning the LCA, the Commission finds no need to address those arguments, as all charges against the appellant have been dismissed and the removal reversed.

Since the removal has been reversed, the appellant is entitled to be reinstated with mitigated back pay, benefits, and seniority pursuant to *N.J.A.C. 4A:2-2.10* from the first date of separation without pay until the date of reinstatement.<sup>2</sup>

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, per the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay are finally resolved. In the interim, as the court states in *Phillips, supra*, if it has not already done so, upon receipt of this decision, the appointing authority shall immediately reinstate the appellant to his position.

### ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was not justified. The Commission therefore reverses that action and grants the appeal of Mack Ragsdale. The Commission further orders that the appellant be granted back pay, benefits, and seniority from the first date of separation without pay until the date of reinstatement. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C. 4A:2-2.10*. Proof of income earned, and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

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<sup>2</sup> The ALJ ordered that the charges in the "minor disciplinary memo of December 16, 2020," be dismissed. Although the Commission does not normally have jurisdiction over minor disciplinary matters, the discipline imposed was an "indefinite suspension," which subsequently led to his removal, and as such is not considered minor discipline pursuant to *N.J.A.C. 4A:2-3.1*.

Pursuant to *N.J.A.C.* 4A:2-2.10, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay dispute.

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

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 6<sup>TH</sup> DAY OF NOVEMBER, 2024



Allison Chris Myers  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Nicholas F. Angiulo  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
P.O. Box 312  
Trenton, New Jersey 08625-0312

Attachment



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

**INITIAL DECISION**

OAL DKT. NO. CSV 08796-21

AGENCY DKT. NO. 2022-171

**IN THE MATTER OF MACK RAGSDALE,  
CITY OF ATLANTIC CITY, DEPARTMENT  
OF MUNICIPAL UTILITIES AUTHORITY.**

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**David L. Tucker**, President of Government Workers Union, appearing for  
appellant, Mack Ragsdale, pursuant to N.J.A.C. 1:1-5.4(a)(6)

**Adrien Moncur**, Esq., for respondent, City of Atlantic City, Department of  
Municipal Utilities Authority (Decotiis, Fitzpatrick, Cole, & Giblin, LLP,  
attorneys)

Record closed: July 26, 2024

Decided: September 6, 2024

**BEFORE ELAINE B. FRICK, ALJ:**

**STATEMENT OF THE CASE**

Respondent, City of Atlantic City, Department of Municipal Utilities Authority (the City or ACMUA), terminated appellant, Mack Ragsdale (Ragsdale), who was employed as an electrician in the maintenance department of the ACMUA. Ragsdale appealed. The City contends the removal was appropriate, based upon an alleged major infraction committed on October 1, 2020, and an alleged minor infraction committed on December

2, 2020, which mandated termination based upon a Last Chance Agreement (LCA) entered into between Ragsdale and the City in 2017. Ragsdale contends there was no valid or effective LCA, nor did he commit a minor infraction nor a major infraction to warrant termination of his employment. Ragsdale seeks to be reinstated to his job, with back pay and benefits.

### **PROCEDURAL HISTORY**

On December 16, 2020, Ragsdale was issued two disciplinary memorandums. One memo imposed minor discipline and the other imposed major discipline, for two separate alleged incident dates. He was suspended without pay indefinitely, pending a termination hearing, as per the memos.

On June 25, 2021, a departmental hearing was conducted by a hearing officer (HO) for the City at Ragsdale's request. On July 5, 2021, the HO issued a determination to remove Ragsdale. The City terminated Ragsdale effective July 6, 2021.

Ragsdale requested an appeal with the Civil Service Commission (CSC). The City challenged the request for a hearing, asserting lack of jurisdiction by the CSC, since the incidents occurred in 2020, which was when the State had oversight of the City and CSC provisions were not in effect. A representative from the CSC issued reply correspondence to the City's then counsel on September 29, 2021, indicating that Civil Service was restored to the City as of June 24, 2021. Since the effective date of termination occurred thereafter, the CSC asserted it did have jurisdiction, and the matter would be transmitted to the Office of Administrative Law (OAL) for a hearing.

On October 21, 2021, the matter was transmitted to the OAL and filed to be heard as a contested case. N.J.S.A. 52:14B-1 to 14B-15 and N.J.S.A. 52:14F-1 to 14F-13.

The City submitted a motion to dismiss in the OAL, asserting a lack of jurisdiction by the CSC. The City thereafter submitted a supplemental motion for summary decision, asserting that Ragsdale was appropriately terminated pursuant to an LCA. On February 14, 2023, an order was entered denying the City's motions.

The OAL hearing began in person at the OAL on March 4, 2024. The parties jointly requested on that date that the next day's scheduled hearing would be adjourned due to witness availability issues. The adjournment request was granted. The hearing continued in person on March 18, 2024, and March 19, 2024. A schedule for the submission of written summations was set and extended by consent request. Written summations were submitted, and the record closed upon review of same.

### **FACTUAL DISCUSSION AND FINDINGS**

The following information was derived from the witnesses' testimony and documentation entered, which has been assessed for credibility. I **FIND** as **FACTS**:

The ACMUA is the entity responsible for the supply of water to the City. There is a Board of Directors for the ACMUA. The hierarchy of administration begins at the top with the executive director then deputy director, who have offices at the administrative building on Virginia Avenue in Atlantic City. There is a plant manager and an assistant plant manager of the water treatment plant, which is located in Pleasantville. The employees who work at the plant are generally all titled as operators, who ensure that the water treatment is done properly and safe water is supplied to the City.

There is a maintenance department unit for the ACMUA. There is a manager of maintenance and assistant manager. The employees under this unit are generally titled as laborers and electricians. The maintenance department employees can work at any facility for the ACMUA or location in the City, depending on the work to be done, such as digging trenches or doing general maintenance work at the administrative building or at water treatment plant.

Some administrators and managers are identified as "Acting" in a position, which apparently occurs when the individual has not been officially appointed to the position. When individuals are doing job tasks which are normally not within their job description, it is commonly referred to as working out of title or working out of class.

Mack Ragsdale was hired by the ACMUA as an Electronics Technician 1 in June 2008. He was promoted sometime thereafter to Electronics Technician 2, the position he held as of 2017 and through 2020. The Civil Service Commission (CSC) job specification for an Electronic Systems Technician 2 defines the position as one which, under limited supervision, the technician performs "more difficult tasks involving the installation, testing, maintenance, and repair of electrical and electronic equipment, machinery and systems[.]" (P-3 at 1.)

The GWU is a labor organization representing blue collar employees of the ACMUA. The GWU and ACMUA are parties to a collective bargaining agreement. (P-4.) Ragsdale is a member of the GWU through his employment at ACMUA.

The New Jersey Division of Local Government Services (DLGS) assumed control of the City as of November 9, 2016, when the City's recovery plan was deemed by the Commissioner of the Department of Community Affairs to be unlikely to achieve stability. The DLGS and CSC thereafter entered into a Memorandum of Understanding (MOU) which confirmed that as of November 9, 2016, the CSC would not maintain oversight over employment matters of the City, and any CSC Final Agency decision after November 9, 2016, would be withdrawn from review. Thus, CSC rules were no longer in effect, due to the State's oversight of the City and the terms of the MOU.

Approximately four and a half years later, on June 24, 2021, the Governor of New Jersey signed an act which extended the State's oversight of the City but abolished the MOU between DLGS and the CSC. The act restored civil service supervision to employment matters for the City's employees and the City's departments and agencies, including the ACMUA, effective June 24, 2021.

The ACMUA contends that Ragsdale agreed to the terms of a LCA on August 24, 2017. (R-3.) The LCA document provides that ACMUA was giving final warning to Ragsdale that due to on-going "performance problems" his continued employment with ACMUA was contingent upon immediate and substantial improvement in his "work performance." (R-3 at 1.) The document is signed by Ragsdale as of August 6, 2017,



and signed by the Plant Manager, Anthony Palombi and by the then Executive Director of ACMUA, G. Bruce Ward, as of August 24, 2017. (R-3 at 2.)

The LCA sets forth that Ragsdale agreed in 2017 to be suspended for sixty working days with fifteen of those days being held in abeyance should Ragsdale complete an anger management program within six months. It further indicates that if Ragsdale were to incur two minor disciplinary actions or one major disciplinary action in a five year period, beginning after the sixty working days suspension, Ragsdale's employment with ACMUA shall be terminated effective the date of the major disciplinary action incident or the date of the second minor disciplinary action incident, whichever occurs first. (R-3 at 1.) The LCA further notes that Ragsdale agreed he shall not request a hearing or file a grievance, nor take any other action against the City regarding his employment, should he not follow the specifics of the LCA. (R-3.)

As of August 2017, when the LCA was executed, the State had oversight of the City and CSC provisions were not in effect. However, there was a Collective Bargaining Agreement (CBA) in effect between the City and the GWU as of August 2017, which contained an article regarding disciplinary action of GWU member employees. (P-4 at 58-60.) The agreement indicated that the ACMUA "shall not discharge any employee without just cause." (P-4 at 58.) The CBA further indicated that if an employee is subject to a major disciplinary action, they shall be afforded a disciplinary hearing. (P-4 at 58.) Any minor disciplinary actions could be appealed using the CBA's grievance procedure. (P-4 at 58, 41-44.)

The CBA disciplinary article further set forth a progressive style of discipline. The agreement indicates that discipline "shall normally be imposed" starting with an oral warning, then written warning, written reprimand, minor disciplinary action (consisting of a suspension of up to five days), major disciplinary action (consisting of suspension over five days after the determination of a departmental hearing) and termination (after the determination rendered from a departmental hearing). (P-4 at 59-60.)

The ACMUA was required under the CBA to give an employee written notice of a minor or major disciplinary action. (P-4 at 59.) The notice "shall contain charge(s) and

specifications, a general description of the alleged acts and/or conduct upon which the charge(s) is based and the nature of the discipline." (P-4 at 59.)

On December 16, 2020, Ragsdale was issued two memos regarding disciplinary action imposed upon him by Nicholas Mancuso, the Deputy Executive Director (DED) of the ACMUA at that time. One memo has the reference line of "Minor Disciplinary Action" and advises Ragsdale that his actions on December 2, 2020, were incompetent, insubordinate, inefficient, or otherwise failed to perform his duties. (P-1.) The memorandum stated:

On 12/02/2020 you were assigned to check the wiring to Hach AF7000 streaming current detector. You cut off the AC power cord and stripped the wiring. The wiring cannot be repaired without losing the warranty according to the manufacturer.

Again, the damage you caused resulted in a piece of water treatment equipment to be out of service and the ACMUA having to burden unnecessary cost due to your work performance.

(P-1.)

Under the heading of "Disciplinary Action" the memorandum indicated "Therefore, you are hereby suspended without pay indefinitely pending a termination hearing. The ACMUA will contact you with a time and date for the hearing." (P-1.)

The other memo issued to Ragsdale by DED Mancuso on December 16, 2020, has the reference line "Major Disciplinary Action." (P-2.) There are three paragraphs in the memo asserting that on October 1, 2020, Ragsdale was incompetent, neglected his duty and was insubordinate, and was unable to perform his duties. (P-2.) Regarding the charge of incompetency, the memo indicated:

Upon completion of investigating the damages that occurred in the ACMUA administration building on Thursday, October 01, 2020, the ACMUA has confirmed that your work performance led to multiple damages. The damages included, but were not limited to the loss of two telephone line extensions cut/disconnected, cutting and pulling an internet wire from the control booth to the server room. This action

caused the ACMUA security system to be shut down for over a week. In addition, the cutting of a motion sensor which disabled the security system.

(P-2.)

Regarding the charge of neglect of duty and insubordination, the major discipline memo indicated:

Supervision [sic] confirmed you being informed you were holding a phone wire do not cut it [sic]. Your response was this is not a phone wire you made the decision to cut the wire and a supervisor lost that extension immediately after you cut the wire. You also cut and pulled a bright blue internet wire from the control booth to the server room which disabled compute [sic] access to our server and internet. Your assignment was to remove old camera wiring that was a completely different color.

(P-2.)

Regarding the charge of inability to perform his duties, Ragsdale was advised in the major discipline memo:

Mr. Ragsdale your job performance on October 01, 2020 led to multiple contractor bills that the ACMUA had to endure. Also, you and a laborer II had to work for an additional two weeks to correct the mistakes that were made. The ACMUA experienced the loss of customer service due to two phone lines being down as well as the administration building's security off line for a week.

(P-2.)

Under the heading of "Disciplinary Action" in the major discipline memo, the following was stated "Therefore, you are hereby suspended without pay indefinitely pending a termination hearing. The ACMUA will contact you with a time and date for the hearing." (P-2.)

A departmental hearing was conducted by hearing officer Tracy L. Riley, Esquire, (HO Riley) on June 25, 2021. HO Riley issued a letter decision, dated July 5, 2021, determining that despite Ragsdale being afforded a disciplinary hearing, he already

agreed to his termination as per the LCA from 2017. (R-5.) HO Riley determined that Ragsdale's actions warranted "the most severe penalty of termination." (R-5 at 10.)

On July 6, 2021, ACMUA's personnel officer issued a letter to Ragsdale, which noted that Ragsdale had been suspended indefinitely since December 20, 2020, pending a termination hearing. The letter further states that since HO Riley determined that Ragsdale violated the terms of the LCA dated August 24, 2017, his employment with ACMUA was "considered terminated as of July 6, 2021." (J-1.)

**G. Bruce Ward**, current solicitor for the ACMUA, testified at the hearing at the request of Ragsdale. Solicitor Ward explained that his first employment with the City was as the city's solicitor, then as the appointed municipal judge, and thereafter he served as executive director of the ACMUA. He retired "quite suddenly" as executive director in March 2020. He is now serving as the solicitor for the ACMUA. He candidly indicated that his memory is blurry due to his age, and could not recall specific dates and instances, unless able to review documentation to prompt his recollection.

Solicitor Ward confirmed his signature appears on the LCA with Ragsdale, with the date of August 24, 2017, next to his signature. His recollection of the operations of the ACMUA at the time he served as executive director, was that the Board of Directors for the ACMUA (the ACMUA Board) was very powerful. The ACMUA Board President was the former Chief of Police for the City, who was controlling and in a "conspiracy" with the then solicitor of the Board, who was "illegally" contracted for three years to serve the Board as solicitor.

Solicitor Ward was aware that prior to the LCA, Ragsdale had been involved in "antics" at the workplace, comparable to the stuff that went on by Ragsdale's peer employees at the time. Such "antics" infuriated the leadership at the plant. Ward was not aware of any violence or threatening behavior by Ragsdale. He was made aware that Ragsdale apparently posted things through social media. He did not see that Ragsdale's behavior rose to the level of the need for an LCA. Ward asserted that the ACMUA Board president at that time did not appreciate the seriousness of this young man's livelihood being placed under the terms of the LCA. Ward was aware that the LCA agreement

indicated that there was a culmination of other disciplinary matters involving Ragsdale. Ward felt that Ragsdale's history of violations was not "monumental" in parity with Ragsdale's peers at his worksite.

Solicitor Ward denied that he prepared the LCA, and asserted it may have been the City solicitor or someone else, since the font on the document was not the type of font he used for preparation of documentation. He confirmed he signed it, asserting that he went along with giving Ragsdale a last chance, although he did not believe the LCA was ever formalized by the Board. He asserted it was his belief that such an important situation would need to be approved by the ACMUA Board.

Solicitor Ward acknowledged that there were only three signature lines on the LCA document, for himself, Ragsdale, and the plant manager at the time, Anthony Palombi. He confirmed those three signatures appear on the LCA. He confirmed there were no additional signature lines on the document, such as for the Chairman of the ACMUA Board, or for a notary. (R-3.) He acknowledged there was nothing in the document itself to indicate that Board endorsement or approval was required. He recognized that it appears to be a signed agreement, yet commented that there are defendants in criminal matters who sign plea agreements to resolve their matter, although they are innocent.

Solicitor Ward believed he needed to sign the LCA, given the climate of the administration, the ACMUA Board, and the supervisors. Ward needed to retain staffing, such as the licensed Plant Manager Palombi, since Ward was contending with big issues for the ACMUA, such as the New Jersey American Water company attempting to overtake their public entity operations of the ACMUA. Ward candidly remarked that he did not trust the plant manager and did not trust those who worked under the plant manager for the ACMUA.

He was aware that there were a number of "actors" at the plant who, for whatever reason, did not like Ragsdale, or were otherwise jealous of him. They proceeded to make "a mountain out of a mole hill" when it came to Ragsdale. Solicitor Ward himself was born and raised in Atlantic City and explained that an "urban guy" like Ragsdale was not viewed as a "buddy" or "positive guy" by others, and you need to look at the allegations and the

"alligators." Solicitor Ward felt the lineup of people with allegations was "questionable." He was particularly struck by what could be motivating those individuals to go to the serious level of giving an LCA to Ragsdale, under his circumstances.

Solicitor Ward asserted that to his knowledge, the ACMUA Board never formally endorsed the LCA. In his judgment, he felt the LCA was "inoperable." His understanding was that the LCA "sat in limbo" since it was not endorsed by the ACMUA Board.

Nicholas Mancuso, the Deputy Executive Director for the ACMUA as of December 2020, did not testify at the hearing. The ACMUA presented witness testimony from Edward Jones, Claude Smith, and Robert McKinley.

**Edward Jones** testified that he has been employed by the ACMUA for approximately seventeen years. He originally was hired as a senior operator and was promoted in 2017 to the position of assistant plant manager. That was the position he was in at the time the disciplinary memos were issued to Ragsdale in 2020. Jones was promoted to the position of plant manager in 2023, the position he was in at the time of his testimony.

Jones' responsibilities as an assistant plant manager included oversight of all the operators that operated the facility. He oversaw the hourly testing of the water, ensured operators were there to cover the shifts, and he filled in for the assistant manager of maintenance, if that individual was unavailable. Jones was not the supervisor of electricians, such as Ragsdale. Electricians were under the maintenance department, and Ragsdale's supervisor was the assistant manager of maintenance, who at the time in question was Mark Hicks. Although Jones was not considered Ragsdale's supervisor, sometimes Jones functioned in that supervisory role when covering for the assistant manager of maintenance Hicks. That occurred during the time frame of approximately 2017 through 2020, when Ragsdale was suspended and thereafter terminated.

Jones does issue discipline to employees. The discipline may involve talking to an employee or giving them time off. Jones testified that it depends upon what occurred and what they felt the punishment should be for the violation. He indicated that an email

may be considered an oral or written reprimand if addressed directly to an employee. If the email was never sent to or presented to the employee, it could not be considered counseling or another form of discipline.

He described that normally the discipline process begins by him getting notified of an incident by an employee. That would be sent up to the plant manager or to the executive director. They will discuss what recommended discipline or action should be taken and then the manager or executive director will come back and confirm they would go with the recommended discipline from the assistant manager or go with another form of discipline. Jones described that the discipline imposed upon an employee takes into consideration prior actions and issues of the employee and if they had a prior suspension of, for example, sixty working days, then the next discipline would be added onto that amount, as a means of being progressive discipline. The purpose of the discipline is to conform the employee's behavior to acceptable standards.

Jones was aware of Ragsdale through his employment at ACMUA. They would work side by side, although plant operator titles, such as Jones' title, were higher than the maintenance worker titles, such as Ragsdale's title. From time to time, the maintenance workers would have to take direction from the plant operators because the operators control the equipment which the maintenance workers may be assigned to work on. Jones confirmed the operators are responsible for the drinking water for the City. If the maintenance workers did not follow instructions when working on plant equipment, there could be safety concerns or issues with water quality treatment if the equipment malfunctioned.

Jones described Ragsdale's work performance generally as not very good. If Ragsdale did not want to do a job, or felt that a job should be done differently than what he was told, Ragsdale would "snap the bolts or broke the stuff around where he worked." (Trans. March 4, 2024, 29:18-19.) Jones felt that Ragsdale was "lazy." (Trans. March 4, 2024, 33:14.)

In his position as assistant plant manager, Jones would sometimes be copied on emails about incidents or issues involving work performance by employees from the

operations department or the maintenance department of ACMUA. He was made aware that in 2017 Ragsdale posted videos online while he was working that showed some of the plant equipment. Jones did not personally see the video postings. Jones did know that there was a workplace policy against taking pictures or videos while "on the clock" at work, unless it was for an authorized work purpose. Jones was aware that Ragsdale was disciplined with a suspension for having posted videos on social media. He further was aware that Ragsdale had to sign a Last Chance Agreement to be permitted to return to work. Jones was not involved in the drafting of the LCA nor was he involved in providing any input as to what would be in the LCA. Jones was only made aware that a LCA had been done because he was covering for Assistant Maintenance Manager Hicks, who was out due to having been in a motorcycle accident. Jones was told that the LCA would cover a certain period of time and if Ragsdale had any further infractions during that timeframe, Ragsdale would be terminated. Jones understood that the LCA was drafted because the incident which prompted it was considered a major incident.

Jones indicated that at the time of the LCA with Ragsdale, the climate at the ACMUA was that the executive director and a few other people in management felt there was too much discipline. They were trying to lessen the discipline by talking out issues with people. That method did not work. Jones testified that it caused chaos.

During the time frame of 2017 through 2020, the supervisor of maintenance was Robert McKinley. Jones would have communication and interactions with McKinley about employees from the maintenance department, regarding incidents or issues with such employees which might impact the workplace.

Jones was made aware that Ragsdale was assigned to work on one of the plant machines. Jones was told Ragsdale took the electrical box for the machine apart and left wires exposed and the breaker on. Another employee went in and closed the door on the box and it hit the live wires which arced and melted fiberoptics cables in the electrical panel. Ragsdale, in the position of electrician, should have known how to perform the job correctly and should have known to cap the exposed wires. Jones testified that he did not believe Ragsdale was disciplined for the incident. Jones recalled seeing an email about the incident, but understood that Ragsdale was not disciplined at the time.



Jones heard that In February 2019 Ragsdale incorrectly performed his duties at workstation six. Ragsdale apparently was working on the air station on filter number six. He was supposed to have completed the task, but was not working. The plant went through the weekend with the air station not functioning, and ACMUA apparently had to bring in an outside contractor the following week to work on the air station and fix the problem. Jones indicated that Ragsdale was not disciplined, which was a decision made above him to not suspend Ragsdale.

Jones also was aware of incidents between maintenance supervisor McKinley and Ragsdale. They had numerous verbal altercations to where the situations almost got physical. Jones testified that the altercations would occur when McKinley, as supervisor, was trying to instruct Ragsdale to perform a task.

As of October 2020, Jones as assistant plant manager, had to cover the assistant manager of maintenance responsibilities, because there was no individual in the assistant manager of maintenance position. Jones was made aware that Ragsdale was instructed by Supervisor McKinley to go to the ACMUA's administrative building, located on Virginia Avenue in Atlantic City, to do work involving the removal of wiring and old security cameras. Jones commented that Claude Smith, who was the Acting Executive Director then, probably told McKinley the work that needed to be done at the administrative building.

Jones was aware that Ragsdale was assigned a laborer to assist him with the task of the removal of the wiring and old equipment. Jones was not present with Ragsdale, but understood that Ragsdale was not being directly supervised during the task. Jones testified that Ragsdale did not complete the task because he cut wrong wires and caused the internet, phone system, and security system for the building to go down. Jones stated that Ragsdale cut the access control system wires for the building, instead of the wires that were for the old camera system. Ragsdale, as an electrician, should have known the difference between the different types of wiring. Jones testified that the ACMUA "had to bring in multiple contractors to make repairs" which took "a couple days" and had to be paid for by the ACMUA. (Trans. March 4, 2024, 89:3-10.) Jones candidly acknowledged

that he was not present when Ragsdale did work on October 1, 2020. He did not see the alleged damage caused by Ragsdale's cutting of wires, and did not see any contractor's bills nor documentation about the amount of time it took to have the wiring repaired. He received such information as it was relayed to him in conversations with others.

Jones was copied on a memorandum by Claude Smith, dated October 13, 2020, which was issued to Ragsdale. (R-2.) Jones was copied because he was functioning as Ragsdale's supervisor at the time. Smith's email to Ragsdale outlined damage that was done at the administrative building, which occurred after Ragsdale had performed work there on October 1, 2020. (R-2.) Jones testified that it was not typical for the Acting Executive Director to draft such a memorandum. He asserted AED Smith drafted the memorandum because of the severity of the incident which required contractors to be called in to repair the damage. Jones confirmed he was not at the administrative building on October 1, 2020, when Ragsdale was tasked there to remove wiring. Jones did not observe Ragsdale, nor did he see the result of Ragsdale's actions, as described in AED Smith's memo. (R-2.) Jones was only made aware of Ragsdale's activity due to discussions with Smith and reading his memo. Jones did not know who told or alerted Smith to the incidents and events Smith describes in his memo that were brought to Smith's attention. (R-2.) Jones believed that one of the supervisors, Tiffany, in the other administrative office may have been the individual who supposedly warned Ragsdale not to cut certain wires, as alleged in Smith's memo. However, Jones could not affirmatively state who that individual was as reported by AED Smith in his memo.

Jones asserted that Ragsdale's actions on October 1, 2020 would be incompetence by Ragsdale because one should never cut a wire if they do not know where it goes or what it does. Jones further asserted this would be insubordination because Ragsdale did not follow directions given to him by his supervisor, McKinley. Since Ragsdale damaged equipment and did not report it right away, Jones testified that would be failure to do one's job duties.

After the incident occurred, Jones took part in discussions regarding disciplinary action for Ragsdale, with the AED Smith, the DED Mancuso, and the Plant Manager, Palumbi. They made a determination as to disciplinary action to take against Ragsdale,

but it was not immediately reported to Ragsdale because Jones thought Ragsdale was out on a medical leave.

Ragsdale was working as of December 2, 2020, when he was given another work assignment. Jones understood that Ragsdale was tasked with verifying that the signal wire was hooked up to the Hach AF7000 Streaming Current detector to the load lift. The equipment had been reinstalled because it came back from being serviced. Jones understood that another individual hung the equipment on the wall.

Jones testified that he understood Ragsdale was to open up the panel for the equipment to look at the gray signal wire, which has three wires inside of it. The three wires are black, white, and green, or it is shielded with copper, depending upon the make of the wire. Ragsdale was supposed to verify that the three wires were on the correct terminals. Instead of doing that, Jones asserted that Ragsdale cut the power cable. Jones testified that by cutting the power cable, Ragsdale voided out the warranty on the \$14,000 streaming current detector equipment. They had to obtain a new wire from the manufacturer and pay to have the issue repaired.

Jones explained that the streaming current protector measures the current of the water to ensure that there are proper coagulant dosages effectively treating the water coming into the facility. The coagulant makes small particles in the water larger so that they can be settled out and filtered out more easily. The streaming current protector measures the charges in the water and will alert an operator if they are overfeeding or underfeeding the coagulant. The operator controls the feed of the equipment. The streaming current protector is a tool for the operator to know that the feed is in the proper range.

If the streaming current protector equipment is not working, there can be an effect on the drinking water for the city. Jones acknowledged there was no effect to the drinking water at the time, but it potentially could have had a negative effect. Jones acknowledged that the water treatment system was never out of service.

Jones confirmed he was not present when the task was assigned to Ragsdale. He

did not see Ragsdale cut the power cord to the streaming current detector. Jones did see the equipment after Ragsdale had been sent to check on it. Jones saw the power cord cut off and did see that the wiring was stripped.

Jones asserted that Ragsdale failed to follow instructions when he was supposed to verify the connection of a wire and instead cut the power cord. He affirmed this could be considered incompetence and insubordination. Jones did not give the assignment to Ragsdale and was not present when Ragsdale was alleged to have been assigned to just check the equipment.

Jones testified that in discussions with AED Smith, DED Mancuso, and Plant Manager Palumbi, they all decided upon appropriate disciplinary action for Ragsdale. They determined Ragsdale should be terminated due to the provision in the LCA that if he had one major or two minor infractions, he would be terminated. Jones asserted that Ragsdale's subsequent incidents on October 1, 2020, and December 2, 2020, violated the terms of the LCA and required him to be terminated. He confirmed that they decided Ragsdale had to be terminated, based upon the LCA. Jones testified that had there not been an LCA, he speculated that Ragsdale would have been given a very lengthy suspension, possibly with the recommendation for a termination. As a supervisor, Jones thought without the LCA, there would have been a long suspension.

Jones believed the October 1, 2020, incident with the cutting of the wrong wires and shutting down of systems at the administrative building would warrant imposition of major discipline due to the chaos that ensued from Ragsdale's actions. Jones also believed that the December 2, 2020, incident would warrant major discipline when Ragsdale cut the power cable for the streaming current protector. Given Ragsdale's "track record" and knowing the way Ragsdale worked, Jones asserted that some of the "so-called mistakes" by Ragsdale were "made out of spite." (Trans. March 4, 2024, 102:6-24.)

Jones testified that Ragsdale had a long track record of when he did not like a job assignment Ragsdale would intentionally break something out of spit or intentionally damage equipment. He candidly stated Ragsdale's behavior may have had something

to do with his relationship with McKinley, as Jones knew the two men did not like each other and Ragsdale did not like taking instructions from McKinley. There was no documentation provided by Jones to verify Ragsdale's history as he alleged.

Jones contended that Ragsdale was given opportunities to be successful at the job, having been given a lot of leeway and second and third chances during his career. Jones affirmed he believed the management had been patient with Ragsdale and coached him to be a better worker, although Ragsdale was not receptive to additional coaching and training. Ragsdale would make the same mistakes again and again. No documentation was provided by Jones to confirm the alleged coaching or any disciplinary history for Ragsdale.

Jones thought, to his knowledge, that the incidents of October 1 and December 2, 2020, were "documented." He candidly acknowledged that he did not have independent, firsthand observation knowledge of the assignments given to Ragsdale.

Jones acknowledged that DED Mancuso issued the two memos to Ragsdale on December 16, 2020, regarding major discipline for the October 1, 2020, for the removal of wiring at the administrative building matter and the minor discipline for the December 2, 2020, cutting of the power cable for the streaming current detector. (P-2, P-1.) Jones did not know who conducted the investigation, as referred to by Mancuso in the major discipline memo, regarding the damages that Ragsdale allegedly caused after working at the administrative building on October 1, 2020. (P-2.) Jones believed that some of the issues, such as the phone lines, were discovered right away but the other problems did not immediately become evident. He acknowledged he heard about the systems being down, but was not at the administrative building and thus did not observe the reported issues. He heard about the systems being down through conversations.

Jones asserted it was the laborer who was with Ragsdale who saw Ragsdale holding the telephone wire in his hand and told him not to cut it, yet Ragsdale cut it. Jones believed DED Mancuso told him that occurred. Jones further believed that it was someone who worked in the office at the time who overheard the alleged exchange between Ragsdale and the laborer, who then relayed that information to Mancuso. (P-

2.)

He adamantly believed that Ragsdale had notice of his prior issues, which Jones described as infractions, yet confirmed that no discipline came about. If Ragsdale did not directly receive an email about the incident, he was made aware of it because Jones knew every time an email about Ragsdale went around, Ragsdale would send his own email to either Mr. Ward, Mr. Smith, or Ms. Demski, who were in administrative positions. Ragsdale would complain that various supervisors were harassing him, and Ragsdale tried to "beat" the paperwork incoming to the administrator's office about his improper behavior. Jones was told that Ragsdale had discussions about his incidents with others, but those discussions never involved Jones himself. Jones could hear heated and loud discussions between Ragsdale and McKinley when they were in Palumbi's office, which was down the hall from Jones' office. Jones believed they just walked away angry. He testified that he did not consider the multiple incidents in the supervisor's emails about Ragsdale as being progressive discipline.

**Claude Smith**, formerly the Acting Executive Director (AED) of ACMUA, testified at the hearing via Zoom technology. He is now retired and appeared to be on vacation in a vacation-like setting during his remote testimony.

He began his career with ACMUA as a staff engineer in 1991. He was promoted to the position of deputy executive director of engineering in 2018. In the position of staff engineer, former AED Smith indicated he would oversee projects such as water main replacements and worked with employees from all departments within the ACMUA. In the position of staff engineer, Smith was a project supervisor and not necessarily a hands-on supervisor of individual employees.

He recalled that at some point the City was under State oversight and he knew that an MOU was in effect which removed civil service procedures. The disciplinary process during that time was done in a similar manner to the CSC disciplinary procedures. As of 2020, when Smith was serving as acting executive director, he would be copied on any memos which would issue either minor or major discipline to an employee. The deputy executive director of ACMUA as of 2020 was Nicholas Mancuso, who had

authority to issue notices of disciplinary action to ACMUA employees. Smith himself testified he did not write up or discipline employees on a regular basis, having maybe done one or two disciplinary write ups.

Former AED Smith knew Ragsdale from seeing him and encountering him through work at the ACMUA. Smith did not serve as supervisor of Ragsdale. When he was Deputy Executive Director of Engineering, he was in a supervisory position for the ACMUA. He was thus aware that Ragsdale was under an LCA subject to termination regarding future infractions or violations. He did not draft the LCA and did not take part in formulating the LCA.

He understood that the LCA came about because Ragsdale had posted videos while on the work premises and made derogatory statements, in violation of rules and regulations of the ACMUA. Smith understood that Ragsdale received some type of suspension for that and the LCA was entered into. His recollection was that if Ragsdale received either one major or two minor infractions within five years, Ragsdale would be terminated. He believed the LCA was entered into on August 17, 2017, the date that is handwritten on the first page of the LCA, but could not confirm if it was August 16 or 18, 2017, the date that appears to be part of the typed document. (R-3.) He could not explain how Ragsdale could have signed the LCA which is dated August 6, 2017, next to Ragsdale's signature, before the LCA was written in as an effective date.

AED Smith did not think that Ragsdale served the full sixty-day suspension set forth in the LCA. (R-3.) He was not aware of how many suspension days Ragsdale physically served regarding the provisions of the LCA.

As of 2020, AED Smith would report to work at the ACMUA administrative building. A few months prior to October 2020, Ragsdale was assigned to remove old security cameras at the administrative building.

On October 1, 2020, AED Smith testified that he assigned Ragsdale to remove or move the old coaxial cables from the security camera system which were no longer needed because a new security video system was being installed. Ragsdale instead cut

wiring and cabling. That caused two of the phone lines in the administrative building to go "dead" and the internet to go "dead" and the security alarm system began giving an alert. Smith himself did not have any personal interaction with Ragsdale on October 1, 2020, when Ragsdale performed the work at the administrative building.

AED Smith believed that Ragsdale should have been capable of completing the task, given his job title as an electrician. AED Smith said that shortly after Ragsdale caused the problems at the administrative building, Ragsdale was out on vacation, and they did not immediately discover the issues until a day after the work was done. Ragsdale did not tell anyone on the day that he was working that he had cut wiring and cabling.

AED Smith indicated they initially restored the telephone service by, he believed, DED Mancuso running a telephone cable from another office's telephone jack to the line that had been cut. An outside company had to come in to repair the telephone lines. They had to call in an outside computer company to run new cable to the computer system mainframe to reconnect the computer services for the administrative building. They also had to use another company to reconnect the alarm system. It took several days to get the systems back in operation.

He drafted and issued a memorandum to Ragsdale dated October 13, 2020, with the reference line indicating "Removal of Security Camera Cables and Abandoned Cable At ACMUA Administrative Building." (R-2.) AED Smith testified the purpose of the memo was to inform Ragsdale that the work done by him created harm to the security of the ACMUA and an investigation was going to occur. The memo was not intended to issue an infraction notice at that time.

AED Smith's memo indicated that it was brought to his attention that since the time Ragsdale worked at the ACMUA administrative building on October 1, 2020, two office telephone lines were lost and the intranet/internet connectivity in the security booth and an alarm booth fault occurred, resulting in the inability to arm the security system. The memo further indicates that it "was also brought to" Smith's attention that despite Ragsdale having been warned that there was telephone wiring, he proceeded to cut those



wires without confirming the designation of the wires. (R-2.) The memo stated:

Due to your inattentive decision and neglect, your actions has [sic] created a vast inconvenience to some Authority employees and also compromised the building security system.

Please be advised that upon further investigation and analysis of these issues your work performance will be evaluated to determine what actions will be taken with you.

(R-2.)

AED Smith testified that an investigation was conducted by then DED Mancuso. Smith was not aware of anyone else taking part in the investigation. He could not recall if a written report issued after the investigation. Smith assumed that DED Mancuso did "write something up" about the investigation. (Trans March 18, 2024, 74:10-21.) The conclusion reached was that the wires were cut at the administrative building. AED Smith testified that DED Mancuso told Smith that Ragsdale had been informed not to cut particular wires because of their function yet Ragsdale cut the wires anyway. AED Smith doubted that the actual cost of bringing in outside contractors to make repairs was presented during Ragsdale's disciplinary hearing.

AED Smith believes that Ragsdale's actions on October 1, 2020, constituted neglect and would be insubordination if he disregarded a supervisor's instruction to him specifically not cut wires, and then Ragsdale went ahead and did cut the wires. AED Smith testified he did not know who told Ragsdale not to cut the wires. He thought Ragsdale's actions would be considered incompetency and inability to perform his duties since an electrician should know how to identify wiring, or determine if something is live wiring or transmitting data. AED Smith speculated that the action done by Ragsdale, and not notifying anyone at the ACMUA regarding the cut wiring, would warrant major disciplinary action against Ragsdale. He testified on cross examination that because of Ragsdale's title and the egregiousness of the work done by cutting the wires and not notifying anyone as to what he did, Ragsdale would be subject to major discipline. Ragsdale should have been capable of identifying different cabling wires or electrical equipment in his job title.

AED Smith did not recall that there was a second incident with Ragsdale until shown the memo issued by DED Mancuso regarding the December 2, 2020, matter when Ragsdale allegedly cut the power cable to the streaming current detector. (P-1.) AED Smith testified he understood that Ragsdale cut or stripped some wiring which caused some type of failure of the equipment which could not be repaired by ACMUA employees, according to the memo issued by DED Mancuso. Smith did not know whether Ragsdale's action took a piece of equipment out of service and did not know if there was any effect on taking out the water treatment process at the plant.

Smith did not know why DED Mancuso issued both the minor and the major infraction notices on the same date, December 16, 2020. Smith testified it was Mancuso who made the determination to issue the notices and to assign the penalties for the incidents. That was within Mancuso's title and responsibilities as DED.

AED Smith believed that Ragsdale was appropriately terminated since the LCA required termination if he incurred a major disciplinary action within five years of the LCA. The October 1, 2020, incident resulted in a major disciplinary action. Since that was within five years of the 2017 LCA, it required termination of Ragsdale from his employment.

**Robert McKinley** testified on behalf of the City. He is a seventeen year employee of the ACMUA. He began as a laborer, doing mostly digging, getting tools together, and jackhammering. Approximately five years ago he was transferred to the water treatment plant facility in Pleasantville and was working out of title doing maintenance jobs and work. He was then promoted to an electric technician position, having graduated from a two year accredited electrical school in Pennsylvania prior to his employment with ACMUA. He also completed electrical one, electrical two, and a troubleshooting course at Atlantic County Institute of Technology. He is currently the supervisor of maintenance and labor at ACMUA. Supervisor McKinley's job responsibilities include assigning work tasks to his subordinates, ensuring the work got done, and ordering materials and supplies. He supervised approximately eleven employees, including Ragsdale.

In his position as supervisor, if McKinley has an issue with an employee that he

cannot address himself, such as an employee being insubordinate or disgruntled, he will provide a write up, in the form of an email and send it to the assistant plant manager and will copy the plant manager on the email. They will make the determination whether there is any disciplinary action to be taken. Supervisor McKinley is not responsible to draft a notice of disciplinary action. That is done by the assistant manager, with ACMUA letterhead.

Prior to becoming a supervisor, McKinley had only worked with Ragsdale when McKinley was a laborer and then when they both were at grade five electronics technician level. They did some electrical jobs together such as working on light fixtures. He testified that Ragsdale "semi-trained" him since McKinley was new to the plant and Ragsdale provided a lot of information to him. At that time, their supervisor was Richard Coles, whose son, George Coles, worked as a laborer for ACMUA.

Supervisor McKinley testified that he got his promotion "off of merit" because he busted his "butt out there" and his electrical skills, combined with HVAC and plumbing certifications gave him the knowledge and experience to advance. (Trans March 18, 2024 97:6-19.) He gained the trust of the plant manager and executive director. Upon his promotion, he became Ragsdale's supervisor, rather than a colleague. Supervisor McKinley noted he and Ragsdale had gotten along fine when McKinley was a laborer and then on the same technician level as Ragsdale. He noticed a change in Ragsdale's attitude towards him when McKinley advanced further in title. McKinley heard from other employees that Ragsdale was on an LCA, but that did not change how he treated Ragsdale.

As Supervisor, McKinley is required to assign tasks to his subordinates. He testified that when he gives out assignments, he explains himself more than once.

McKinley recalled an incident that occurred with Ragsdale in January 2019. McKinley had given out assignments one morning and had assigned two employees to clean up the lime machines and assist the senior operator to get the lime machines back in service. One of the employees called McKinley asking him to come down to the line machine. When McKinley arrived there, the employee indicated that someone had

walked past an electrical box and the box arced on him, which is like an electric shock arcing, a dangerous situation when two hot connections meet. McKinley observed the electrical box and saw that live wires were not capped off and not secured. There was no lockout tag in place, nor was the breaker turned off. McKinley himself had to cap it off and put wire nuts on there and completed the lockout tag.

Supervisor McKinley documented the incident in an email and sent it to the then Assistant Manager of Maintenance, Mark Hicks. (R-4.) The email indicated that McKinley was reporting that on January 24, 2019, McKinley was called to the high service lime house facility. When he arrived there, a staff member indicated that there was a "near miss with a [sic] electrical/communication box that had a [sic] electric arc while they were walking by the box." (R-4.) McKinley's email confirmed that he checked the electrical box and saw that the wires in the box were not capped off and there were no lockout tags in place. He found the electrical box to be energized and the breaker was not in the off position.

McKinley's email indicates that he saw Ragsdale come in and asked him about the electrical box and Ragsdale replied that he did not know that the wiring was "hot." McKinley indicated that he replied to Ragsdale that it did not matter whether Ragsdale knew that because none of the wires were capped off and Ragsdale had created "an unsafe and dangerous environment." (R-4.) Nothing was provided to document that Ragsdale was subject to discipline or received any form of discipline for this alleged incident.

In October 2020, McKinley recalled that then AED Smith called him and asked McKinley to ensure that Ragsdale returned to the administrative building to complete a task Smith had previously assigned to Ragsdale. McKinley himself had not assigned Ragsdale the task. McKinley later heard that Ragsdale had been assigned to pull wires from one end of the building to the other and in some way the wires were cut. McKinley may have spoken to Ragsdale after the incident but could not specifically recall any such conversation.

In December 2020, Supervisor McKinley had assigned a maintenance guy to

install a streaming current detector on the wall of the load lift. The maintenance guy had also "wired it up." Two days later, on December 2, 2020, McKinley assigned Ragsdale to go check the streaming current detector to make sure it was wired correctly. Ragsdale was supposed to put his eyes on it to see if he thought it was schematically wired properly. Ragsdale accepted the assignment.

McKinley stated on cross-examination that two employees, one a laborer and one a supervisor, had installed the equipment at his request. He asserted they were qualified to do so. He acknowledged that neither individual had credentials as those required to be an electronics technician. He indicated that the laborer was working outside of title in maintenance and did the installation. McKinley only wanted Ragsdale to look at the work done, to determine if it was done properly. If it had not been done properly, Ragsdale was supposed to report back to McKinley, not attempt to wire it himself because that was not Ragsdale's assignment from McKinley.

When McKinley went to check on Ragsdale, McKinley found Ragsdale at the equipment holding a cord in his hand. Supervisor McKinley asked Ragsdale what happened and why did he have the cord in his hand. Ragsdale indicated that he was wiring up the equipment. McKinley explained to Ragsdale that was not his assignment, he was only supposed to check on the wiring and just put his "eyes on it." Ragsdale responded to McKinley that he thought McKinley wanted him to wire it up. (Trans March 18, 2024 99:19-25; 100:1-8.) McKinley did not believe Ragsdale. It was a surprise to him that Ragsdale had cut the cord and was holding it in his hand. He testified he told Ragsdale three times to look at the electrical box. He did not tell him to cut anything or to wire it. He asserted he was absolutely clear in his instructions to Ragsdale. He thought Ragsdale may hold a grudge against him, since McKinley had moved up in the ranks over Ragsdale.

Supervisor McKinley later learned that Ragsdale was issued a minor disciplinary action by DED Mancuso for the December 2, 2020, incident for having cut the power cord for the streaming current detector. (P-1.) McKinley believed that Ragsdale's action in cutting the cord was incompetent and insubordinate, as he never told Ragsdale to cut the wire. Ragsdale was an electrician tech two, which is someone under McKinley's

supervision, but without having to be micro-managed in their work. McKinley asserted that Ragsdale should have reported back to McKinley about his observations and Ragsdale acted improperly by trying to wire it up. Ragsdale failed to perform his duties by failing to report back to McKinley and undertaking a job for which he was not assigned. Ragsdale caused the streaming current detector to be out of service and the cord needed to be reordered. McKinley was verbally told that operations of the water plant were disturbed, but he did not personally witness it and is not an operator so he would not know if the water treatment had been affected.

**George Coles**, a twenty-two year employee of the ACMUA testified. He is employed as a laborer. He was assigned to work with Ragsdale on October 1, 2020, at the administrative building. He was the helper for Ragsdale to do tasks such as holding a ladder or handing tools to Ragsdale.

Coles recalled being with Ragsdale and meeting Claude Smith, the AED at the administrative building in Atlantic City. AED Smith assigned them to remove security cables and cameras at the ACMUA Administration building. They first removed old video cameras outside then had to go inside to remove the wiring for the cameras.

The wiring in the ceiling area of the Administration building looked like "spaghetti." Coles testified they asked AED Smith for blueprints or a document showing what the wires were for, but Smith did not provide anything to them.

Coles testified that they were pulling lines and cutting wires. He recalled that a telephone line got cut accidentally. They went to the hardware store, got a part, and returned to fix the wire before they left for the day. The line was spliced back together, and the secretary there indicated everything was good.

He was present with Ragsdale while Ragsdale was working on the wiring. No one else was with them. He denied that any supervisor or anyone warned him or Ragsdale not to cut specific wires. He denied anyone talking to him about wire coloring and what to cut or not cut.

Coles was not aware that lines were allegedly cut or that the building's security system was shut down due to Ragsdale's alleged actions, as written in the major discipline memo of December 16, 2020. (P-2.) It was brought to Coles' attention the day after they were working in the building that some other lines had been cut. He has no knowledge about the information in the memo that the security system was down and that contractors had to be called in to do corrective work or that the City incurred bills from contractors. He denied that he worked two weeks thereafter to correct any issues.

**Raymond Morton, Jr.** is a twenty-four year employee of the ACMUA, and currently employed as a Maintenance Repair employee. He knows Ragsdale through work and they respect each other. He expressed there was "a big problem" at the plant. The problems began when McKinley was brought over to the plant and then put in a supervisor position when Ragsdale was the senior man at the time. Morton asserted this violated Ragsdale's seniority. Morton expressed displeasure with the current administration and supervisory staff at the ACMUA. He candidly confirmed he has no personal knowledge of Ragsdale's matters as it relates to the issues pertinent in this disciplinary proceeding.

**Mack Ragsdale** testified. He was hired as an Electronics Technician 1 in June of 2008 for the MUA. Sometime thereafter he was promoted to Electronics Technician 2.

Regarding the LCA, the incident that occurred prior to the execution of the document was Ragsdale having posted a video online through social media. He described that on that date, he went to get a tool and was talking to a mechanic in the shop. The mechanic kept looking over at then Supervisor, Mark Hicks. Ragsdale insisted that the mechanic talk to him and not involve Hicks. Then Hicks came over, belly to belly with Ragsdale, looking at him aggressively and asking what Ragsdale was going to do. Hicks was intimidating him. Ragsdale felt so low and upset, believing that if he complained about the situation, it would come back on him. He did tell Hicks he was not scared of him, yet felt "soft" and "hurt." He testified that he later did send something in writing about the incident to the Human Resources director.

Ragsdale left the mechanic's shop, zoomed down the street in his truck, and wanted to talk to his family and friends via Facebook. He confirmed on cross examination

that he stated "fuck my boss" on the video, referring to Supervisor Hicks. He acknowledged having done the video and that he was wrong because he was not supposed to do any such recording on work property. He accepted his fate. He just felt that no one understood the issues he was going through before the video posting, because of the bad vibe in the workplace at the time in 2017, as described by former ED Ward during his testimony. Ragsdale testified that he "was crying out for help." (Trans March 19, 2024 176:5.) He was hurt and things came to a head with Hicks on the date Ragsdale posted his video on social media.

Regarding the LCA, Ragsdale testified he appeared at a meeting with the board and was not permitted to have a union representative with him at the time. He remembered leaving the room and talking to ED Ward, whom Ragsdale knew to be a lawyer, and another attorney who was also present, Mr. Weber. They gave him a pamphlet and told him he would need to agree to an LCA to keep his job. He just left. He felt so defeated by the process and how unfair it was.

Ragsdale acknowledged that he did sign the LCA. (R-3.) He stated he did so in the parking lot of a local pharmacy, where his union representative said they could meet, rather than at the plant in Pleasantville. The union representative advised him that he had to sign it, or else Ragsdale would be fired. He signed it, since he has a family and children to care for. He stated he did not read the agreement and did not review the terms with the union representative before he signed it. He understood that the LCA was drawn up and he was asked to sign it as a result of his Facebook posting. He stated on cross examination that he was forced to sign the agreement. He acknowledged that the LCA provides that he would be terminated if he had one major disciplinary action or two minor disciplinary actions within five years. However, he asserts that the LCA was not in effect in December 2020.

Ragsdale decided thereafter that he needed to change and wanted to get out of maintenance. He thought he would pursue getting a water treatment license and eventually leave the state and get a job in water treatment since he already had maintenance experience and then would be licensed in water treatment as well. He thought the "juice ain't worth the squeeze" so he created his own zen with the phrase



"right on." (Trans March 19, 2024, 181:10.) Whenever anyone at the plant tried to argue or harass him, he would just say "right on" to them. Ragsdale testified by doing that, he stayed away from trouble. He went to the local community college and got his associate's diploma in 2019 and started his water treatment class and passed that. Then he was working on his next license in 2020 before the matters arose with the issuance of the two disciplinary memos by DED Mancuso. (P-1, P-2.)

Ragsdale testified he never served a sixty working day suspension as set forth in the LCA. He only recalls serving about two weeks of the suspension. He recalled being at home and getting a call from the plant manager's secretary asking him to come back to work the following Monday. He did so and resumed working. He confirmed he went to the employee assistance program, which he referred to as anger management, as indicated in the LCA. He thought it would be beneficial for him given the circumstances in the workplace at the time.

Ragsdale testified as to his recollection of the circumstances of October 1, 2020. In the morning, one of his supervisors told him to go into Atlantic City to meet Claude Smith, the AED at that time, and that Smith would tell Ragsdale what his assignment was for the day. Ragsdale took a laborer with him, because he needed someone to hold his ladder, hand him tools, and assist with clean up. Ragsdale testified that he initially had been assigned a job by AED Smith to remove the camera system and wiring at the administrative building. Once that was completed, Ragsdale told Smith the job was finished.

AED Smith told Ragsdale he had another job for him and walked Ragsdale around on the second floor of the administrative building and pulled cords up in different offices indicating that he wanted some cords eliminated. Ragsdale testified that he told Smith that although it looks "clean right here and it's one wire sticking up," between the second floor and the ceiling downstairs "it's a plethora of wires." (Trans. March 19, 2024 138:17-24.) Ragsdale testified that he told AED Smith it would be very hard to eliminate the wires and told Smith he should get a contractor to do the job.

Ragsdale stated that his job description indicates he is supposed to "advise" so he

was advising Smith it would be safer to hire a contractor for the wire removal. AED Smith chose to "belittle" Ragsdale saying that Ragsdale did not know his job and should know how to remove the wiring. Laborer Coles was next to Ragsdale and tapped on his leg, which Ragsdale understood was to let him know "not to feed into what's going on" and to stop debating with AED Smith what to do. (Trans 142:2-12.) Ragsdale asked for blueprints or a schematic so he would know what was going through the PVC piping and what wiring was going through the ceiling since the wires looked "like spaghetti." (Trans 142:19-20.) Smith said he did not have blueprints and said to ask DED Mancuso.

Ragsdale and Coles left AED Smith's office and saw DED Mancuso. Ragsdale explained to Mancuso that AED Smith wanted wires moved and Ragsdale did not think he should be doing it because there is too much going on in the ceiling. Ragsdale asked DED Mancuso for blueprints or a schematic. Ragsdale could not refuse AED Smith's job assignment, for fear of being suspended five working days for refusal. He felt intimidated by AED Smith to do the job. DED Mancuso told Ragsdale to start the job and Mancuso was going to look for blueprints. Ragsdale was never given blueprints.

Ragsdale started the job and went throughout the building. He got to a PVC pipe about three quarter of an inch wide with approximately twenty wires, all white in color, all identical in appearance. He already had eliminated those wires, so he cut them. When they completed that area, he and Coles moved on to another area of the building. DED Mancuso came to them and indicated that a secretary's phone line was cut and a motion sensor was down in her office, which is an alert for when motion is detected if someone is walking into the office. Ragsdale told DED Mancuso he would complete what he was doing and would return to the secretary's area to check out the problem.

Ragsdale went back to the secretary's office area and had to weed through twenty-five to thirty wires and locate the motion sensor wire. He spliced the wire back by reconnecting the three smaller wires that ran through the cord, then taped the cord up to make sure it was safe and would not come undone. He immediately had fixed the motion sensor. He contended this was not part of the security system for the building. It was a motion sensor line which if that is cut, the security system for the building is still operational.

Ragsdale returned to the other area where he had been working and was cleaning up. DED Mancuso returned and gave him two thumbs up for fixing the motion sensor. DED Mancuso asked Ragsdale to come back to fix the phone line. Coles and Ragsdale took lunch and when returning to Atlantic City, they stopped at the hardware store and picked up a phone cord and returned to the administrative building.

Using the phone extension line from a vacant office, Ragsdale ran the vacant line up through the drop ceiling and over to the secretary's area. He took the wire down from there and hooked it up to the secretary's phone. He advised her there was a change in her extension number. He told her the new extension number. He remedied the one telephone line that was out that day. He testified on cross-examination that he told DED Mancuso if they wanted to get the secretary's extension returned to the original extension number, they would have to get someone else to come in and do that wiring.

Ragsdale indicated that the administrative building did not suffer the loss of two telephone line extensions. Only one line was out for a brief period in the morning until after lunch when he repaired the line by running another extension line to the secretary's office. Ragsdale stated he does not know why it is alleged the intranet and internet in the security both were lost. He was not working in the security booth. The allegation that the administrative building security system could not be armed is false. He admitted that he cut "over a hundred wires" in the administrative building, having to go from the front end to the back end and it was a big job. (Trans March 19, 2024, 220:12-18.)

Ragsdale was made aware of the motion sensor line having been cut, which he immediately repaired. He recalled AED Smith asking him to run new wires from one area to another, which he did do with new fiber cables but left them hanging because AED Smith did not know exactly where they should go and Ragsdale himself "definitely, didn't know exactly where it went." (Trans March 19, 2024 154:1-8.) He denied that he cut any such wires. He denied that he cut bright blue internet wiring, as alleged in the disciplinary memo. (P-2.)

No one ever advised him on October 1, 2020, that he should not cut a specific

wire. There was no supervisor working with him that day. Only the laborer Coles was with Ragsdale as he worked. Coles did not tell Ragsdale not to cut a wire. No one said anything like that to him when he was working that day.

Ragsdale did not know of any contractor having to be hired to do repairs to fix any of his work from October 1, 2020. He would have been informed from the administration in the Atlantic City office, through to his supervisor in maintenance. Due to Ragsdale's position as a grade five, or electronic technician two, he would have been informed if contractors were on site. He would have had to sit and observe such contractors and provide information or answer questions the contractors may have about the system or where things were located. If contractors had to be brought in, there would be bills and there have been no bills provided by the City to show the ACMUA incurred such expenses.

Ragsdale confirmed he received the major disciplinary action memo from DED Mancuso, dated December 16, 2020, regarding his work on October 1, 2020. He denied that he caused any of the problems and issues alleged in the memo. He acknowledged there was one motion sensor line that he had to repair by slicing it back together and one telephone line which he fixed by running the line from the vacant office over to the secretary's office. The one phone line was only temporarily out of service for a few hours on that day. He acknowledged that an outside contractor would have been needed to restore the original telephone line extension for the secretary.

On December 2, 2020, Ragsdale had been given an assignment by Supervisor McKinley. He explained that in the chain of command in Ragsdale's department, before McKinley was there, if Ragsdale's Supervisor Richard Coles was out, Ragsdale would act as the supervisor. He knew that if he ever assigned someone to do a job out of class, you, as the supervisor, are supposed to stay with that person to oversee their work.

McKinley told him to go look at the AF7000 streaming current detector at the plant, mentioning that it was already mounted. Ragsdale understood his assignment as having to put the equipment into operation. He denied that McKinley specifically told him to go put his eyes on the equipment and come back to him.

Ragsdale asked Supervisor McKinley who mounted the equipment, since no one is supposed to touch such equipment except for him and McKinley, the two with the electronics technician titles. Supervisor McKinley told him the names of two laborers who mounted the equipment and told Ragsdale to go look at it and make sure it was alright.

Ragsdale went to the plant and the streaming current detector was mounted on the wall. The equipment measures how many gallons of water of water flow through. When Ragsdale saw the equipment, it was two feet from a pump and there was a valve that stops water flow there. As an electrician, he knew that such equipment is not to be plugged in so close to water. Any equipment is to be on its own breaker. Ragsdale saw that the streaming current detector was not wired to a breaker. It was only mounted on the wall with the ac power cord and plug hanging down. It was not plugged in.

He explained that he did not cut anything. The plug for the cord is on one end, while the other end of the cord had the three smaller wires inside of the cord individually wired into the equipment. He never would have cut anything. He realized that he would need to run thirty feet of PVC piping and run the power cord through the PVC piping from the equipment to where the breakers are located. He decided to leave his tools there and take his lunch break, and return after lunch to do the job. All he had done was unscrewed the wiring for the power cord and removed the plug. He did not cut any wires.

Ragsdale stated that Supervisor McKinley's testimony did not make sense that he only told Ragsdale to go look at the equipment and report back to him. Ragsdale's job requires him to connect things, hook up equipment, and make sure there is power, and equipment is in service. It does not make sense that he would be told to go look at something, then have to come back and tell the supervisor what he saw, and then be told to go back and hook it up.

A minor disciplinary memo was issued to Ragsdale by DED Mancuso on December 16, 2020, regarding the December 2, 2020, matter. Ragsdale indicated the allegations in that memo are "totally false" since the equipment was not in service, it was only mounted on the wall. He was not stopping anything that was going on because the equipment had been out of service. There are fourteen or fifteen of the streaming current

detectors in the building. The one streaming current detector he was working on to wire up into service was closer to the pumps. He did not stop any operations since that one piece of equipment was not in service yet and it was not functioning.

### **Credibility analysis**

In factually contested matters, the fact finder is required to weigh the credibility of witnesses to render a determination on the facts presented. Credibility is described as a quality to the 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. Credibility findings are "often influenced by matters such as observations of character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463, 475 (1999). "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).

In this matter, all of the witnesses testified in what was detected to be candid and forthright. No witness was emotionally inflamed or exaggerating in their statements. Claude Smith, the Acting Executive Director as of 2020, was soft spoken and testified with ease. Robert McKinley, Supervisor of Maintenance and Labor as of 2020, was also soft spoken with a pleasant and candid demeanor and a sense of frustration repeatedly asserting he only told Ragsdale to look at the equipment and did not tell him to cut any wires or otherwise do any work on the equipment. Edward Jones, the Assistant Plant Manager as of 2017, promoted to plant manager as of 2023, was direct, professional, and clear spoken in his beliefs and understanding as to the circumstances of the issues presented. It was understood through most of the testimony from the witnesses for the ACMU that their testimony was their "understanding" of events and information, based mainly upon hearsay statements made to them or what they gathered in terms of hearing

others speak about circumstances. Their truthfulness as to the sources of their information and beliefs, being mainly all hearsay, was appreciated.

G. Bruce Ward, the current solicitor for the ACMUA Board, who was Executive Director in 2017, was direct in his testimony, and candidly remarked up front that he has memory issues. He was professionally assertive in his testimony.

It was evident that George Coles, the laborer who worked with Ragsdale at the administrative building on the October 1, 2020 job, did not want to be in the court room setting and was uncomfortable. That did not diminish his testimony, as he answered questions directly although it was apparent he wanted to be done.

Raymond Morton, Jr., was outspoken regarding his personal views of the ACMUA operations, administration, and management. He was direct and assertive in his statements.

Ragsdale was soft spoken, conversive in his testimony, and displayed energy to have the opportunity to tell his story. The passion all of the witnesses who testified for Ragsdale was evident. They all clearly expressed their frustration with the ACMUA morale and highlighted the distrust between and running through all levels of administration, management, staff, and employees of ACMUA from 2017 through even the present time. Likewise, the same passion and frustration with the mistrust through and between the administration, management, and employees, was expressed and felt from the witnesses who testified for ACMUA.

### **DISCUSSION AND LEGAL CONCLUSIONS**

The Civil Service Act and regulations set forth in the New Jersey Administrative Code govern the rights and duties of a civil service employee. N.J.S.A. 11A:1-1 through 11A:12-6; and N.J.A.C. 4A:1-1.1, et. seq. The purpose behind the civil service regulations is to provide rules establishing a "personnel system that provides a fair balance between managerial needs and employee protections for the effective delivery public services." N.J.A.C. 4A:1-1.1; see N.J.S.A. 11A:1-2.

The Civil Service Act allows a public entity employer to select and advance skilled employees, without being burdened with an employee who fails to perform their duties satisfactorily or has engaged in misconduct related to their duties. N.J.S.A. 11A:1-2(a); 11A:2-20. Thus, a civil service employee who commits a wrongful act related to their employment may be subject to discipline. The regulations set forth the policy and procedures for the disciplinary process of a civil service employee.

An employee will be subject to discipline for committing any one of twelve enumerated violations within the administrative code, such as incompetency or failure to perform duties; insubordination; inability to perform duties; neglect of duty; or other sufficient cause. N.J.A.C. 4A:2-2.3. Discipline which may be imposed can 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, et. seq. Minor discipline is a reprimand or a suspension or fine of five working days or less. N.J.A.C. 4A:2-3.1(a). A local appointing authority, such as the City and the ACMUA, may establish procedures for processing minor discipline and grievances. N.J.A.C. 4A:2-3.1(d). Major discipline is a suspension or fine of five or more working days, a demotion, or the removal/termination of the civil service employee from their position of employment. N.J.A.C. 4A:2-2.

An employee may appeal a major disciplinary action to the Civil Service Commission. N.J.A.C. 4A:2-1.1; N.J.S.A. 11A:2-6, 11A:2-13. The appointing authority employer has the burden of proof at the appeal hearing to establish the truth of the 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 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. Metropolitan Bottling Co., 26 N.J. 263, 275 (1958).

In this matter, Ragsdale was presented with two disciplinary memos on the same



date, December 16, 2020. The memo referenced as being major discipline referred to the October 1, 2020, work performed at the administrative building by Ragsdale, when assigned by AED Smith to remove wires and run wiring at the administrative building. The other memo, referenced as minor discipline, pertained to the December 2, 2020, streaming current detector power cord allegedly having been cut and wires stripped from the equipment by Ragsdale, which was allegedly contrary to Supervisor McKinley's work assignment to Ragsdale to go look at the equipment and report back to him. Both memos impose discipline of indefinite suspension pending a termination hearing.

Ragsdale was later terminated after a hearing was conducted by HO Riley. The HO determined that due to the terms of the LCA, Ragsdale was to be terminated if he incurred either one major or two minor disciplinary matters within five years of the LCA. Ragsdale's termination was rendered effective July 6, 2021.

The first issue to be addressed is the validity or effect of the LCA. Ragsdale does not dispute that he signed the agreement. He contends that he did not read it and only signed it because he was told to do so or else he would lose his job. That does not render the LCA ineffective. What causes pause is that the current solicitor for the ACMUA Board, G. Bruce Ward, who was the Executive Director in 2017 and signed the LCA in that capacity, provided testimony questioning the validity of the LCA. He denied that he prepared the LCA. He testified that an agreement such as that should have had Board approval, yet there is no indication that the Board approved same, nor was it executed by Board members. He called into question whether the LCA remained in effect, implying it was disregarded or abolished in some manner, as referenced by Ragsdale that he did not serve the full suspension outlined in the LCA and was asked to return to work sooner. AED Smith also confirmed that Ragsdale did not serve the entire sixty day suspension.

There were no minutes of a Board meeting presented to confirm how the terms of the agreement came about or otherwise were approved by the Board. Nothing was presented to challenge Ward's testimony. Ragsdale himself is the only person to provide testimony as to the alleged event, his posting of a video on Facebook which apparently was filmed on ACMUA property, which apparently gave rise to the discipline in the LCA.

The LCA itself does not identify that it is the discipline imposed for the Facebook posting issue. There has been no documentation presented regarding the Facebook posting event and what, if any notice was given to Ragsdale about the potential discipline he faced, whether he had a disciplinary hearing, or was even offered to have a departmental hearing due to the looming major discipline of termination. Although Ragsdale testified he knew it was against the rules to photograph or videotape on ACMUA property, the rules were never presented, nor the discipline which could be imposed if an employee violated the rule against photography and videography.

The LCA indicates that it is Ragsdale's final warning that his employment was contingent upon immediate and substantial improvement in his work performance. The LCA notes it was created because of ongoing performance problems. No specific "work performance" or "performance problem" is noted in the LCA. There is no mention of prior discipline having been imposed, to confirm that the LCA was in fact a form of progressive discipline. There was no evidence presented at the hearing regarding prior discipline imposed, only claims that the LCA was the controlling document which mandated termination once Ragsdale incurred the major discipline as per one of the December 16, 2020, disciplinary memos.

There was no documentary evidence that the LCA was the disciplinary agreement formulated as a result of the Facebook posting matter and was representative of "progressive discipline" since no disciplinary history leading up to the LCA in 2017 was provided. The powerful testimony from the current legal authority for the ACMUA, attorney Ward, who indicated the LCA was "inoperable," coupled with the testimony of AED Smith and Ragsdale that Ragsdale never served the entire sixty day suspension in the LCA, is supportive that the LCA was no longer valid as of 2020. I **CONCLUDE** that the evidence preponderates that the LCA cannot be deemed an effective contract for purposes of binding Ragsdale to immediate termination if he incurred two minor disciplinary infractions or one major disciplinary infraction within a five year period from the date of the LCA, under a controlling policy of progressive discipline.

The two disciplinary charges issued to Ragsdale on December 16, 2020, occurred during the time CSC procedures were not binding and hence there were no standard CSC

Preliminary Notices of Disciplinary Action nor Final Notices of Disciplinary Action which are required to be served in a timely fashion upon a CSC employee subject to discipline. The purpose is to provide adequate notice to a CSC employee that the employer seeks to impose discipline, setting forth the alleged charges violated and the incident or incidents giving rise to the discipline intended to be imposed.

Although CSC procedures may not have been in effect as of 2020, the Collective Bargaining Agreement between the GWU and the ACMUA was effective, and pertained to Ragsdale as a member of the GWU. The CBA required the ACMUA to give an employee written notice of minor or major disciplinary action containing the charges and specifications, a general description of the alleged inappropriate acts or conduct of the employee and the nature of the discipline to be imposed. The CBA sets forth a progressive style of discipline, similar to CSC regulations, starting with oral warnings and written warnings before imposing minor discipline of up to five days suspension and then progressing to major discipline of a suspension of more than five days or termination. There must be "just cause" to terminate an employee.

With that backdrop, the two disciplinary memos issued to Ragsdale on December 16, 2020, by DED Mancuso. Neither one could be deemed "compliant" with the CBA disciplinary procedures, given that they both imposed a form of discipline not outlined in the CBA, that being the indefinite suspension of Ragsdale, pending a termination hearing.

The major discipline memo asserts that after an investigation, it was determined that Ragsdale was incompetent, neglected his duties and was insubordinate, and was unable to perform his duties on October 1, 2020, when Ragsdale was assigned to do work at the administrative building. As to the charge of incompetency, it was alleged that Ragsdale caused the ACMU to incur damages by having cut or disconnected two telephone line extensions and that he cut and pulled internet wire from the control booth to the server room and cut a motion sensor which disabled the security system, and the security system was shut down for over a week.

As to the charge of neglect of duty/insubordination, Ragsdale allegedly was holding a wire in his hand and someone told him not to cut it and he proceeded to do so.

No witness for the ACMUA could identify who it was who saw Ragsdale and told him not to cut the wire. Ragsdale denied that occurred. His assistant denied that Ragsdale was told by someone not to cut a wire and then he proceeded to do so. Ragsdale supposedly cut a blue wire when he was not ordered to do so. Ragsdale denied cutting a blue wire and no evidence was presented to demonstrate that he cut a blue wire.

As to the charge of inability to perform his duties, Ragsdale was advised that his job performance on October 1, 2020, required multiple contractor bills incurred by ACMUA to remedy his damages and that another laborer had to work two weeks to do repairs. It was further alleged that the two telephone lines were down and no customer service could be rendered for two weeks due to the loss of the phone lines.

No evidence was presented by ACMUA to demonstrate what investigation was conducted, by whom, and how the investigation resulted in the determination that discipline of an indefinite suspension pending a termination hearing was appropriate. There was no investigatory report. No evidence of the alleged damages was presented. There were no bills, no contractor invoices, no photographs nor any documentary evidence presented, only the hearsay testimony from AED Smith. Any testimony from the ACMUA's witnesses about the October 1, 2020 actions of Ragsdale were hearsay statements. AED Smith's allegations about the damages sustained by the ACMUA due to Ragsdale were not supported by documentation or other firsthand testimony of a witness.

Ragsdale and his assistant Coles testified about the events of the day and Ragsdale himself confirmed that he cut one telephone wire and he remedied the situation by running the telephone line for the extension from the vacant office to the secretary's office, to provide a working telephone line for the secretary. He acknowledged that a contractor would be needed to restore the same telephone line extension for the secretary. He admitted that he inadvertently cut the motion sensor wire and remedied that by splicing the wire back together. He denied that the cut motion sensor wire caused the entire security system to go down or that the security system was rendered inoperable for an extended period of time.

I **CONCLUDE** that the ACMUA has failed to demonstrate by a preponderance of any evidence that Ragsdale was insubordinate, incompetent, or unable to perform his duties on October 1, 2020. I **CONCLUDE** the charges of insubordination, incompetency, and inability to perform duties shall be dismissed.

Ragsdale admittedly cut a telephone line and remedied the situation by running a vacant office telephone line over to the secretary to restore phone service, yet acknowledged that a contractor would be needed to restore the original extension line for the secretary. He admittedly had cut the motion sensor wire yet remedied that by splicing it back together and taping it up. He indicated these were mistakes. I **CONCLUDE** this demonstrates that Ragsdale was negligent in carrying out the job assignment to cut wiring that was no longer necessary. He cut an active telephone line and motion sensor wire. There is no evidence presented that he intentionally cut those wires. He had expressed reservation to Smith about having him do the assigned task, yet felt rebuffed by Smith and pressured to do the job. He at least sought to have blueprints or a schematic given to him before embarking on the assigned task. Thus, the only charge sustained from the major discipline memo regarding the October 1, 2020, work by Ragsdale is the charge of neglect of duty. All other charges in the major discipline memo were unfounded.

The other discipline memo issued on December 16, 2020, was referenced as imposing minor discipline for the December 2, 2020, matter when Ragsdale is alleged to have been assigned to check the wiring on the streaming current detector and instead stripped the wire and cut the power cord, rendering the warranty void on the equipment and causing the water treatment equipment to be out of service. It was further alleged that ACMUA incurred a "burden of unnecessary cost." The memo indicated Ragsdale was incompetent, insubordinate, inefficient, or otherwise failed to perform his duties.

Supervisor McKinley insisted that he asked Ragsdale to put his eyes on the streaming current detector to make sure it was installed properly. He insisted he never told Ragsdale to cut any wires. Ragsdale contends that it makes no sense that McKinley would have told him to look at the equipment and then return to McKinley and tell him what he observed. Ragsdale believed he was sent to look at the streaming current

detector and make sure it was wired up and powered, since that is what his job is, to hook up and wire up equipment.

There was no written work order to confirm exactly what Ragsdale was assigned to do. There was a level of distrust, jealousy, and heated tension between the two men in the workplace, with McKinley having been promoted to a supervisor position when Ragsdale, and others in the workplace, felt Ragsdale should have been promoted since he had a longer tenure at ACMUA.

Ragsdale started to work on powering up the streaming current detector equipment, which ACMUA contends was contrary to McKinley's assignment to only look at the equipment. It is recognized that this appears to be a misunderstanding or miscommunication between the men as to exactly what McKinley wanted Ragsdale to do and what Ragsdale believed he was told to do. The evidence preponderates that even if all McKinley wanted Ragsdale to do was look at the equipment and report back to him, this could have been misconstrued since Ragsdale learned that laborers had installed the equipment, but they were not qualified or otherwise supposed to have been powering up the equipment, which is Ragsdale's job as an electrician. I **CONCLUDE** the ACMUA has not demonstrated Ragsdale was insubordinate on December 2, 2020. I **CONCLUDE** the charge of insubordination shall be dismissed.

The ACMUA asserts Ragsdale was incompetent, inefficient, or otherwise failed to perform his duties on December 2, 2020, by having disabled the equipment by cutting the power cord and causing ACMUA to incur repair costs and have the equipment out of service. There was no documentation presented to confirm repair costs or to demonstrate how long it took for ACMUA to order a new power cord and have the equipment powered into service. Ragsdale was correct in his testimony that he did not cause the equipment to be out of service since the equipment had not yet been placed into service. He testified that he did not cut the power cord but did remove it by unscrewing the inner wiring from the contacts. He intended to purchase PVC piping and then run the piping containing the power cord wire from the equipment directly to a breaker. As an electrician, he testified that to simply plug in the cord to the nearest outlet would be unsafe in that environment with the risk of water contacting the power outlet. Supervisor McKinley testified he saw

Ragsdale standing at the equipment with the power cord in his hand. Assistant Plant Manager Jones did observe the wiring and saw that it was stripped, and the power cord had been cut. No further testimony or documentation was provided to confirm the cost to replace the cord or if it had to be wired to a breaker as Ragsdale suggested in his testimony, or if the new cord was simply reattached and then plugged into the nearest outlet.

Ragsdale left to go to lunch and asserted he was never given the opportunity to finish the job of powering the streaming current detector. The ACMUA insists that Ragsdale caused damage and repair costs because he never should have cut the power cord. Ragsdale thought he was putting a piece of equipment into service by having to wire it up to a breaker. Nothing has been provided to support the hearsay statements as to damages caused by Ragsdale by the work he started to perform on the streaming current detector. He asserts he only removed the power cord by unscrewing the inner wiring from the contacts. No documentation, photographs, or other supporting evidence was presented to demonstrate that what Jones and McKinley observed could have been what Ragsdale claims, that he had only unscrewed the inner wiring, which apparently could have been the unsheathed wires observed by Jones. No contractor bills were presented or confirmation that the warranty was voided by the manufacturer due to Ragsdale's removal of the power cord, as alleged in the memo by DED Mancuso. Without supporting evidence, I must **CONCLUDE** that the ACMUA has not demonstrated Ragsdale was incompetent, inefficient, or failed to perform his duties on December 2, 2020. All charges under the minor disciplinary memo of December 16, 2020, shall be dismissed. I further **CONCLUDE** that no discipline should have issued pursuant to the December 16, 2020 memo for "minor" discipline regarding the December 2, 2020 matter.

#### **PENALTY**

It has been determined that Ragsdale's conduct on October 1, 2020, was negligent in the performance of his duties by having cut the telephone line and motion sensor wire at the administrative building. Neglect of duty is a charge identified in the CSC regulation at N.J.A.C. 4A:2-2.3(a)1, which is listed as inefficiency, or neglect of duty, as a reason when an employee may be subject to major discipline.

If a determination has been made that a civil service employee has violated a statute, regulation, or rule regarding their employment, progressive discipline is to be considered when imposing the penalty. West New York v. Bock, 38 N.J. 500 (1962); In re Stallworth, 208 N.J. 182, 195 (2011). Progressive discipline was affirmed in the collective bargaining agreement as the disciplinary process to be followed regarding GWU members who were employed by ACMUA. Likewise, that is the CSC regulation policy.

When deciding the disciplinary penalty under progressive discipline, the fact finder shall consider the nature of the charges sustained and the employee's past record. West New York, 38 N.J. at 523-524. The past record is said to encompass the employee's reasonably recent history of promotions or commendations on the one hand, and on the other hand, any "formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated . . . by having been previously called to the attention of and admitted by the employee." Id. Consideration should also be given as to the timing of the most recently adjudicated disciplinary history. West New York, 38 N.J. 524.

It is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. Henry v. Rahway State Prison, 81 N.J. 571 (1980). Thus, 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. Carter, 191 N.J. at 484. Hence an employee may be removed, without regard to progressive discipline, if their conduct was egregious. Id.

No testimony or documentary evidence was presented to indicate that Ragsdale had a prior history of discipline, but for the LCA which imposed a sixty working day suspension and indicated that if future discipline was incurred, Ragsdale could be



terminated. The LCA did not identify what incident resulted in the agreed upon sixty day suspension. There was testimony about a prior incident at the workplace where wiring arced from an electrical box, attributed to Ragsdale not having capped off live wires, yet there was no discipline imposed. There was testimony from Jones that he believed Ragsdale to be spiteful, yet admittedly Jones indicated prior issues with Ragsdale did not result in discipline. The ACMUA inappropriately cites to portions of testimony alleging spiteful or confrontational behavior by Ragsdale, which occurred during the departmental hearing, when this is a de novo proceeding. However, none of the allegations resulted in discipline. Solicitor Ward remarked that Ragsdale's "antics" were no worse than the antics of others in the workplace.

For purposes of reviewing Ragsdale's prior disciplinary history to consider here, nothing has been documented as discipline in any form, whether oral or written reprimand or any prior minor or major discipline. The only documentation is the LCA with a sixty day suspension for an unidentified matter. Ragsdale's own testimony was that the suspension was due to the Facebook video posting he made. The other behaviors or alleged confrontations or incidents involving Ragsdale as having occurred prior to the LCA were all hearsay descriptions and never resulted in discipline.

Ragsdale did admit to having cut the telephone wire and motion sensor. His acknowledgment is appreciated. He admitted that the telephone wire issue was remedied by using another extension wire, but a contractor would be needed to rewire the same extension for the secretary.

The ACMUA asserts that discipline of termination is appropriate, under the terms of the LCA. I have determined that the validity of the LCA is questionable and shall not be used as a trigger for automatic termination if there were two minor infractions or one major infraction within five years. The LCA did provide for a sixty day suspension, but there is no background evidence to support what discipline incident had occurred. The LCA beginning recitation only refers to work performance and performance issues, without identifying any prior discipline for work performance issues as having occurred.

Ragsdale's cutting of the telephone wire a motion sensor wire was a negligent mistake, which should not have occurred given his level of skill and certifications. He was evidently frustrated that day, feeling pressured into doing a work assignment from AED Smith which Ragsdale believed was too big of a job for one man and that outside workers should have been hired. He did not want to refuse the job and risk being suspended. This emotional pressure weighted upon him as he embarked on the job assignment. It does not excuse his negligent cutting of the telephone line and motion sensor, but such action is not so egregious that Ragsdale should have been terminated.

Taking into consideration that there was some form of discipline imposed in the past via the LCA, although Ragsdale and AED Smith asserted he did not serve the full suspension; and considering that the LCA was either abolished or disregarded to some extent after execution; and considering there has been no other prior documented actual discipline issued; and that there has only been hearsay testimony about prior "antics" having occurred, a suspension of ten working days shall be imposed upon Ragsdale for his neglect of duty on October 1, 2020 for cutting wires for a phone line and a motion sensor on that date.

### **ORDER**

It is **ORDERED** that the ACMUA's imposition of the discipline of termination of Ragsdale from his employment for having violated the LCA was inappropriate and shall be **REVERSED** and **VACATED** and Ragsdale reinstated to his employment.

It is **ORDERED** that the charges in the minor disciplinary memo of December 16, 2020, regarding the December 2, 2020, matter shall be dismissed and no discipline imposed upon Ragsdale.

It is **ORDERED** that the charges of insubordination, inefficiency, and inability to perform duties in the major disciplinary memo of December 16, 2020, regarding the October 1, 2020, matter shall be dismissed and no discipline imposed upon Ragsdale for such charges.

It is **ORDERED** that the charge of neglect of duty from the major disciplinary memo of December 16, 2020, regarding the October 1, 2020, matter has been **SUSTAINED** and the discipline of a ten working day suspension shall be imposed.

It is further **ORDERED** that with the reversal Ragsdale's termination, he is entitled to reinstatement to his employment with back pay and benefits to be calculated consistent with the terms of reinstatement and imposition of the ten working day suspension as set forth herein.

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. 40A:14-204.

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.



September 6, 2024  
DATE

\_\_\_\_\_  
ELAINE B. FRICK, ALJ

Date Received at Agency:

emailed September 6, 2024

Date Mailed to Parties:  
EBF/gd

emailed September 6, 2024

**APPENDIX**

**WITNESSES**

**For petitioner**

G. Bruce Ward  
George Coles  
Raymond Morton  
Mack Ragsdale

**For respondent**

Edward Jones  
Claude Smith  
Robert McKinley

**EXHIBITS**

**Joint**

J-1 Termination letter, July 6, 2021

**For petitioner**

P-1 Minor Discipline memorandum, December 16, 2020, regarding December 2, 2020  
P-2 Major Discipline memorandum, December 16, 2020, regarding October 1, 2020  
P-3 CSC Job Specification, Electronic Systems Technician 2  
P-4 Marked, not moved in

**For respondent:**

R-1 Marked, admission denied  
R-2 Memorandum October 13, 2020, to Ragsdale from Claude Smith, Acting Executive Director  
R-3 Last Chance Agreement, August 2017  
R-4 Email January 25, 2019, from Robert McKinley to Mark Hicks

OAL DKT. NO. CSV 08796-21

R-5 HO disciplinary action decision, July 5, 2021