



STATE OF NEW JERSEY

DECISION OF THE
CIVIL SERVICE COMMISSION

In the Matter of Matthew Radecky,
Pohatcong, Police Department

CSC Docket Nos. 2024-1788 and
2024-2104
OAL Docket Nos. CSV 03976-24 and
CSR 06921-24
(Consolidated)

ISSUED: FEBRUARY 5, 2025

The appeals of Matthew Radecky, Police Sergeant, Pohatcong, Police Department, demotion, effective December 28, 2023, and removal, effective May 2, 2024, on charges, were heard by Administrative Law Judge Patrice E. Hobbs (ALJ), who rendered her initial decision on December 31, 2024. Exceptions were filed on behalf of the appointing authority and a reply to exceptions was filed on behalf of the appellant.

Having considered the record and the 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 February 5, 2025, adopted the ALJ's Findings of Facts and Conclusions and her recommendation to reverse the demotion and removal.

Demotion

In her initial decision, the ALJ recommended reversing the appellant's demotion from Police Sergeant to Police Officer. In that regard, the ALJ found:

In September 2023, Radecky was being reinstated to his position after more than two years away from the job. The CSC only ordered a fitness-for-duty evaluation. Robb, as chief of police, is responsible for the safety of the department and the people of Pohatcong. As such, Robb has the authority to issue any additional orders to ensure all officers are current on their training. Robb notified Radecky of these additional orders and told him in the meeting that he could appeal the orders to the PBA. Instead of signing the orders, Radecky insisted that he wanted

to consult with his attorney. Radecky took the orders and left the office. Robb did not insist that the orders be signed at that moment. Instead, Robb told Radecky to return the signed orders before September 1, 2023, at 7:00 p.m. Radecky returned the signed orders by email on September 1, 2023, at 6:56 p.m. Even though he wrote on the orders that he signed them under protest, he did sign and return the orders to Robb prior to the deadline, and Robb accepted them. Radecky reported for duty a few days later. There was no further mention of a refusal to sign the orders until Radecky was contacted by Barsony. I **CONCLUDE** that Radecky did not refuse to obey any lawful order from Robb because Radecky returned the signed orders prior to the deadline.

In its exceptions, the appointing authority argues that the ALJ erred in finding the Police Chief's testimony regarding the meeting did not include an explicit order to sign at that time. In this regard, if the Police Chief issued a direct order to sign the documents at that meeting, as proposed by the appointing authority in its exceptions,¹ and the appellant refused, the fact that he signed the orders at a later allowed time would not necessarily absolve him of failing to follow a direct order. However, the Commission rejects the appointing authority's contentions.

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 its review, the Commission finds no persuasive evidence in the appellant's exceptions or the record to demonstrate that the ALJ's credibility determinations, or her findings and conclusions based on those determinations, were arbitrary, capricious or unreasonable. As such, the Commission finds those determinations worthy of due deference and the Commission adopts the findings and conclusions made therefrom.

Since the demotion has been reversed, the appellant is entitled to unmitigated differential back pay, benefits, and seniority pursuant to *N.J.A.C. 4A:2-2.10* from the

¹ The appointing authority points to specific points in the testimony where it believes the Police Chief gave such a direct order.

first date of the demotion until the date of his removal.

Removal

Regarding the removal, the record shows that the specifications underlying the charges were that the appellant arrived a meeting with the Police Chief five minutes late and was insubordinate during that meeting. In her initial decision, the ALJ found:

Pohatcong is charging Radecky with tardiness. It is undisputed that Radecky arrived five minutes late to a meeting with Robb, but Radecky was not reporting for duty. He was reporting for a disciplinary meeting with Robb. Robb was not scheduled to work. Robb, Radecky, and Vernon were all meeting at the station for the sole purpose of imposing discipline. Radecky also stated that he had asked Vernon to inform Robb that the meeting would be late because Vernon was running late. Even after asking Vernon to relay that message to Robb, Radecky went into the building five minutes late. The meeting convened without any mention of tardiness. Barsony did not interview Vernon to confirm or refute any of the events of December 28, 2023, as to the time the meeting convened or the content of any of the phone calls.

Therefore, I **CONCLUDE** that the Pohatcong has not met its burden to support a charge of *N.J.A.C. 4A:2-2.3(a)(12)*, Other sufficient cause, absent without leave/tardiness, under Final Notice for Demotion [sic] because it was not an official assignment, it was a disciplinary matter. Neither Robb nor Radecky were scheduled to work before or after the meeting, and this charge must be dismissed.

Pohatcong is also charging Radecky with insubordination because he raised his voice and used his hands in a disrespectful manner to the chief of police. The only witnesses who testified to the hand gestures were Radecky and Robb. Radecky could not recall whether he made any hand gestures. Robb demonstrated the hand gesture as a shoving motion. Robb was behind his desk, and Radecky was sitting in a chair near the door. Robb and Radecky were several feet apart. The hand gesture was not directly in Robb's personal space or even close to it. McGuinness testified that Radecky spoke in a loud tone and that he could not really hear Vernon or Robb. Robb testified that Radecky was loud and the words in and of themselves were disrespectful. Radecky testified that he was not being disrespectful to Robb; he was frustrated with the discipline charges and did not think his voice was loud. Vernon was not interviewed. While Radecky's actions could be seen as somewhat disrespectful, it does not rise to the level of insubordination. Radecky did not fail to obey a lawful order. He may have been loud and

gestured with his hands, but there were no orders given that Radecky refused to obey.

While the Commission cannot agree with the ALJ's reasoning that the appellant's tardiness should be dismissed as the meeting was not an "official" assignment, it nevertheless agrees that those charges should be dismissed. The institution of discipline on this basis appears to be the epitome of form over substance, as the Commission questions an attempt to sanction an employee for lateness, where that lateness is a mere five minutes, and the record indicates that reasons were proffered for that lateness. This is especially true where the sanction is removal from employment. Even if worthy of any sanction, it would appear a warning or counseling on timeliness would have been most appropriate, neither of which is considered disciplinary action under Civil Service law and rules. Moreover, the Commission agrees that while the appellant may have been somewhat disrespectful, it cannot ascribe misconduct to those actions, especially given the circumstances. As such, the Commission agrees that the removal should be reversed.

Since the removal has been reversed, the appellant is entitled to be reinstated with mitigated back pay,² 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 actual reinstatement. Moreover, as he has prevailed on all issues in both matters, he is also entitled to reasonable counsel fees pursuant to *N.J.A.C.* 4A:2-2.12.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the demotion and removal 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 or counsel fees 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 permanent position.

ORDER

The Civil Service Commission finds that the actions of the appointing authority in demoting and removing the appellant were not justified. The Commission therefore reverses those actions and grants the appeals of Matthew Radecky.

The Commission further orders that for the demotion, the appellant is entitled to unmitigated differential back pay, benefits, and seniority pursuant to *N.J.A.C.* 4A:2-2.10 from the first date of the demotion until the date of his removal and for the removal he shall be granted back pay, benefits, and seniority from the first date of

² Since the demotion was reversed, this pay should be at the appropriate Police Sergeant rate.

separation without pay to the actual date of reinstatement. The amount of back pay awarded for the removal 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.

The Commission also awards counsel fees to the appellant's attorney pursuant to *N.J.A.C. 4A:2-2.12*. An affidavit of services in support of reasonable counsel fees shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision.

Pursuant to *N.J.A.C. 4A:2-2.10* and *N.J.A.C. 4A:2-2.12*, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay or counsel fees. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay or counsel fees dispute.

The parties must inform the Commission, in writing, if there is any dispute as to back pay or counsel fees 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 5TH DAY OF FEBRUARY, 2025



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
(CONSOLIDATED)

**IN THE MATTER OF MATTHEW RADECKY,
POHATCONG TOWNSHIP POLICE
DEPARTMENT.**

OAL DKT. NO. CSV 03976-24
AGENCY DKT. NO. 2024-1788

**IN THE MATTER OF MATTHEW RADECKY,
POHATCONG TOWNSHIP POLICE
DEPARTMENT.**

OAL DKT. NO. CSR 06921-24
Agency Dkt. No. 2024-2104

Frank C. Cioffi, Esq., for petitioner Matthew Radecky (Sciarra Catrambone Curran
& Gray, LLC, attorneys)

Robert J. Merryman, Esq., for respondent Pohatcong Township Police
Department (Apruzzese, McDermott, Mastro & Murphy, P.C., attorneys)

Record Closed: November 18, 2024

Decided: December 31, 2024

BEFORE PATRICE E. HOBBS, ALJ:

STATEMENT OF THE CASE

Matthew Radecky (Radecky), who was reinstated after a 180-day suspension, was served two separate Final Notices of Disciplinary Action for insubordination by the

Pohatcong Township Police Department (Pohatcong). The first final notice demoted him to patrolman, and the second terminated him. Should Radecky be dismissed? No. In any major disciplinary action such as demotion or termination, the appointing authority must prove by a preponderance of the evidence that the employee must be disciplined. N.J.A.C. 4A:4-6.3.

PROCEDURAL HISTORY

On December 28, 2023, Pohatcong served Radecky with a Preliminary Notice of Disciplinary Action (Preliminary Notice for Demotion) charging him with a violation of N.J.A.C. 4A:2-2.3(a)(2) Insubordination because he did not return the signed orders on August 31, 2023, and recommending a demotion from sergeant to patrolman. On February 15, 2024, Pohatcong served the Final Notice of Disciplinary Action (Final Notice for Demotion) sustaining the charge. On February 20, 2024, Pohatcong served a Preliminary Notice of Disciplinary Action (Preliminary Notice for Removal) charging Radecky with violations of N.J.A.C. 4A:2-2.3(a)(2) Insubordination and N.J.A.C. 4A:2-2.3(a)(12) Other sufficient cause, violation of rules and regulations for absence without leave/tardiness, and for removal.

On February 26, 2024, Radecky filed a timely appeal of the Preliminary Notice Demotion. On March 19, 2024, the case was transmitted from the Civil Service Commission (CSC) to the Office of Administrative Law (OAL) for a hearing as a contested case under N.J.S.A. 52:14B-1 to-15 and N.J.S.A. 52:14F-1 to-13. A prehearing conference was held on April 18, 2024, and I was advised that Pohatcong served Radecky with a Preliminary Notice for Removal. On May 2, 2024, Pohatcong served the Final Notice of Disciplinary Action (Final Notice for Removal) sustaining the charges. On May 14, 2024, Radecky filed a timely appeal of the Preliminary Notice for Removal. A second prehearing conference was scheduled for May 17, 2024; however, the removal case had not yet been filed with the OAL.

On May 21, 2024, the removal case was filed with the Office of Administrative Law (OAL) for a hearing under N.J.S.A. 52:14B-1 to-15 and N.J.S.A. 52:14F-1 to-13. On June 5, 2024, a prehearing conference was held; Radecky requested that the cases be

consolidated, and I consolidated the cases on that date. On August 29, 2023, Pohatcong filed a motion to exclude Radecky's expert on the grounds that his testimony would not assist me with any material findings or conclusions. On September 3, 2024, Radecky filed his reply. On September 5, 2024, I granted Pohatcong's motion and barred Radecky's expert from testifying.

On September 9, 2024, and September 11, 2024, I held the hearing. On November 18, 2024, post-hearing submissions were submitted, and I closed the record on that date.

FINDINGS OF FACT

Based upon the testimony the parties provided and my assessment of its credibility, together with the documents the parties submitted and my assessment of their sufficiency, I **FIND** the following **FACTS**:

Chief Scott Robb has been the Chief of Police for Pohatcong since 2017. Robb has known Radecky for over seventeen years. In May 2023, the CSC ordered Pohatcong to reinstate Radecky to his position of sergeant with back pay and benefits. (R-2.) The CSC stated in its order for reinstatement that the suspension in lieu of termination should be "sufficient warning that any future infraction will likely result in his removal." Id. The CSC also ordered a fitness-for-duty evaluation prior to the reinstatement. The fitness-for-duty evaluation was conducted by Dr. Lewis Schlosser. (R-5.)

Schlosser opined that Radecky was: (1) fit for duty; (2) capable of carrying a weapon, on and off duty; (3) capable of fulfilling all the duties of his rank; (4) was required to abstain from alcohol, benzodiazepines, and other similar intoxicating substances for the remainder of his career; and (5) subject to random alcohol testing. (R-5.)

Robb, as chief, has the authority to include additional requirements prior to reinstatement. Any additional requirements can be administratively appealed through the Police Benevolent Association (PBA), which is the collective bargaining unit for police officers.

On August 23, 2023, Robb informed Radecky that there were conditions being placed on his reinstatement, and once Robb completed the orders for his return, he would be notified of the date of his reinstatement. Radecky confirmed receipt of the email, but the email did not have the orders attached. Radecky told Robb that he had questions and that he wanted his attorney to review the orders. (R-6.) Robb scheduled a meeting to discuss the orders to return to work for August 31, 2023. Radecky requested the orders in advance of the meeting to review them with his attorney. Robb refused. (R-7.)

On August 31, 2023, Radecky appeared in Robb's office to review the orders. Radecky asked to call his attorney while they were reviewing the orders, and Robb again refused. Robb informed Radecky that if he did not agree with the orders, he could file a grievance with the PBA. Robb reviewed the Fitness for Duty/Conditions of Employment memo with Radecky. (R-8.) This was the only order that was reviewed in detail. Robb gave Radecky the remaining orders, which were Operations Directive 23-002, Retraining Program (R-9); Operations Directive 23-001, Vehicle Assignments (R-10); Scheduling Directive 23-003 (R-11); and 2023 Pittman/Sell Back Agreement, Supervisor Shift, Operations Directive 23-003, Supervisor Assignment (R-12). After reviewing the Fitness for Duty/Conditions of Employment, Radecky stated that he would not sign the orders without his attorney's approval, so he took the orders and left.

On September 1, 2023, Robb sent Radecky an email notifying him that he was formally served with his orders and that he must sign and return the orders to him by 7:00 p.m. on September 1, 2023. Radecky signed and returned the orders to Robb on September 1, 2023, at 6:56 p.m., with the addendum that he did not agree with them: "I do not agree with these orders as they are forcing me to relinquish my rights. However, I am signing these orders because of the fear of discipline for failure to do so." (R-4; R-12.) Robb and Radecky had no further interaction between September 1, 2023, and September 18, 2023, regarding the reinstatement orders.

On September 18, 2023, Robb emailed Detective Sergeant Ryan Barsony and requested that an internal affairs investigation be conducted charging Radecky with violation of social media SOP 2.08 (P-27), and insubordination for refusing to sign the orders on August 31, 2023. (R-3.) Barsony reviewed Robb's summary of the incident

(R-4) and the orders, (R-8; R-9; R-10; R-11; R-12), and he interviewed Radecky in the presence of his attorney. During the interview, Radecky confirmed that Robb read aloud the Fitness for Duty/Conditions of Employment line by line. Radecky requested his attorney be present, and Robb refused. Radecky stated that Robb informed him he could file a grievance with the PBA if he disagreed with the orders. Radecky took the orders without signing them, and he returned the orders signed by the required deadline of September 1, 2023, at 7:00 p.m., but under protest.

On October 3, 2023, James Vernon, the PBA representative, penned an email detailing his conversation with Robb and Radecky. (P-14.) In that email, Vernon stated that he was contacted by Robb on September 26, 2023, and that Robb requested that Radecky relinquish his sergeant rank due to "everything that has been happening with him." Vernon did not state whether he was informed that an investigation had begun for insubordination. Radecky declined to relinquish his sergeant rank.

On October 26, 2023, Barsony's investigation sustained the charge of insubordination against Radecky. There was no mention of the exchange between Robb and Vernon. Barsony did not interview Robb. Barsony noted that because of Radecky's disciplinary history, this charge of insubordination was sufficient for termination. However, in lieu of termination, Radecky was demoted to patrolman. Radecky did not file a grievance for any of the orders issued on August 31, 2023.

Robb scheduled a meeting with Radecky for December 19, 2023, to discuss the August 2023 internal affairs investigation that was conducted by Barsony and the demotion. Robb sent Radecky a text adjourning the meeting to December 28, 2023, at noon. (R-14.) Robb was not scheduled to work on December 28, 2023, as it was a holiday week. Radecky was also not scheduled to work. The sole purpose of the December 28, 2023, meeting was to discuss the discipline being imposed. Radecky arrived at the police station parking lot at 11:55 a.m., and at that time, he did not see Robb's vehicle. At 12:01 p.m., Vernon called Radecky and informed him that he was running late. Radecky asked Vernon to call Robb to inform Robb that he (Vernon) was running late. Radecky went to Robb's office at 12:05 p.m. to wait for the meeting.

Vernon arrived at the meeting approximately twenty minutes later. During the meeting, Robb stated that Radecky made hand gestures toward him that were shoving, moving motions. Radecky asked, "Can we just get on with this?" and stated, "The writing is on the wall." Robb was seated behind his desk; Radecky was seated in a chair across from Robb; Vernon was seated beside Radecky. Radecky did not stand up during the meeting and did not recall making any hand gestures, but any hand gestures that Radecky may have made would not have invaded Robb's personal space. At this meeting, Radecky was served with the Preliminary Notice for Demotion, and his demotion to patrolman was effective as of that date.

After the meeting, Robb believed that the statements and the gestures were insubordinate and requested an internal affairs investigation. Robb told Barsony that Detective Charlie McGuinness was also in the building at the time of the meeting, but he was a witness to the event.

On January 4, 2024, Barsony began an investigation of the December 28, 2023, incident, which included a recorded statement from McGuinness and Radecky. Barsony did not interview Vernon. McGuinness said that on December 28, 2023, he was on duty and was in his office. He should have been on patrol but was in his office because he was not feeling well. He did not see Robb, Radecky, or Vernon; he only heard their voices. He said he heard Radecky make comments like "Can we just get on with this?" and the "Writing is on the wall." McGuinness said that Radecky was very loud, and Vernon and Robb spoke in softer tones. As a result, McGuinness opined that Radecky was insubordinate to Robb. McGuinness could not see into Robb's office and therefore could not state whether Radecky made any hand gestures towards Robb. Radecky confirmed he made statements like "Can we just get on with this?" and the "Writing is on the wall" but denied making any hand gestures towards Robb. Radecky also denied shouting or raising his voice. Robb, Radecky, and McGuinness confirmed that there were no other officers or staff in the building that day as it was a holiday week.

Barsony concluded his investigation and sustained charges of absent without leave/tardiness because Radecky was five minutes late to the disciplinary meeting and for insubordination. Radecky was not reporting for duty. Robb was not working that day

and was only at the station for the meeting. The sole purpose of the December 28, 2023, meeting was to deliver the Preliminary Notice for Demotion. Neither Radecky nor Robb was dressed in uniform for the meeting.

Barsony and McGuiness confirmed that being five minutes late is tardiness, and officers are to report for duty, dressed, either early or on time. Radecky stated that in his more than seventeen years with Pohatcong, he had been tardy by five minutes or more and had never been disciplined for being five minutes late. Being tardy is defined in S.O.P. 2.09 as "an employee who reports for an assignment after the scheduled starting time or at the end of a scheduled meal period." (R-20.) There is no specific definition for "after." The December 28, 2023, meeting was not an assignment; it was a meeting to discuss the internal investigation charges from August 2023.

CONCLUSIONS OF LAW

The Civil Service Act and regulations promulgated under the act govern the rights and duties of a civil service employee. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:2-1.1 to 4A:2-6.2. A civil service employee who commits a wrongful act related to his or her duties or who gives other just cause may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.A.C. 4A:2-.2.3.

The issues to be determined at the de novo hearing are whether Radecky is guilty of the charges brought against him and, if so, the appropriate penalty, if any, that should be imposed. See Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962). In this case, Pohatcong bears the burden of proving the charges against Radecky by a preponderance of the credible evidence. See In re Matter of Revocation of the License of Polk, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962).

Neither the Civil Service Act nor the implementing regulations defines insubordination. Caselaw, however, has defined it as a failure to obey a lawful order. In re Williams, 443 N.J. Super. 532, 547 (App. Div. 2016), citing Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 71 (App.Div.1971).

Preliminary Notice for Demotion

In September 2023, Radecky was being reinstated to his position after more than two years away from the job. The CSC only ordered a fitness-for-duty evaluation. Robb, as chief of police, is responsible for the safety of the department and the people of Pohatcong. As such, Robb has the authority to issue any additional orders to ensure all officers are current on their training. Robb notified Radecky of these additional orders and told him in the meeting that he could appeal the orders to the PBA. Instead of signing the orders, Radecky insisted that he wanted to consult with his attorney. Radecky took the orders and left the office. Robb did not insist that the orders be signed at that moment. Instead, Robb told Radecky to return the signed orders before September 1, 2023, at 7:00 p.m. Radecky returned the signed orders by email on September 1, 2023, at 6:56 p.m. Even though he wrote on the orders that he signed them under protest, he did sign and return the orders to Robb prior to the deadline, and Robb accepted them. Radecky reported for duty a few days later. There was no further mention of a refusal to sign the orders until Radecky was contacted by Barsony. I **CONCLUDE** that Radecky did not refuse to obey any lawful order from Robb because Radecky returned the signed orders prior to the deadline.

Therefore, I **CONCLUDE** that the Pohatcong has not met its burden to support a charge of N.J.A.C. 4A:2-2.3(a)(2) Insubordination, under Final Notice for Demotion, and that this charge must be dismissed.

Preliminary Notice for Removal

Pohatcong is charging Radecky with tardiness. It is undisputed that Radecky arrived five minutes late to a meeting with Robb, but Radecky was not reporting for duty. He was reporting for a disciplinary meeting with Robb. Robb was not scheduled to work. Robb, Radecky, and Vernon were all meeting at the station for the sole purpose of imposing discipline. Radecky also stated that he had asked Vernon to inform Robb that the meeting would be late because Vernon was running late. Even after asking Vernon to relay that message to Robb, Radecky went into the building five minutes late. The meeting convened without any mention of tardiness. Barsony did not interview Vernon

to confirm or refute any of the events of December 28, 2023, as to the time the meeting convened or the content of any of the phone calls.

Therefore, I **CONCLUDE** that the Pohatcong has not met its burden to support a charge of N.J.A.C. 4A:2-2.3(a)(12), Other sufficient cause, absent without leave/tardiness, under Final Notice for Demotion because it was not an official assignment, it was a disciplinary matter. Neither Robb nor Radecky were scheduled to work before or after the meeting, and this charge must be dismissed.

Pohatcong is also charging Radecky with insubordination because he raised his voice and used his hands in a disrespectful manner to the chief of police. The only witnesses who testified to the hand gestures were Radecky and Robb. Radecky could not recall whether he made any hand gestures. Robb demonstrated the hand gesture as a shoving motion. Robb was behind his desk, and Radecky was sitting in a chair near the door. Robb and Radecky were several feet apart. The hand gesture was not directly in Robb's personal space or even close to it. McGuinness testified that Radecky spoke in a loud tone and that he could not really hear Vernon or Robb. Robb testified that Radecky was loud and the words in and of themselves were disrespectful. Radecky testified that he was not being disrespectful to Robb; he was frustrated with the discipline charges and did not think his voice was loud. Vernon was not interviewed. While Radecky's actions could be seen as somewhat disrespectful, it does not rise to the level of insubordination. Radecky did not fail to obey a lawful order. He may have been loud and gestured with his hands, but there were no orders given that Radecky refused to obey.

Therefore, I **CONCLUDE** that Pohatcong has not met its burden to support a charge of N.J.A.C. 4A:2-2.3(a)(2) Insubordination, as Radecky did not refuse to obey a lawful order.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the charges contained in the Final Notice of Disciplinary Action dated February 15, 2024, and May 2, 2024, are hereby **DISMISSED**.

I further **ORDER** that Radecky be reinstated as sergeant with all due back pay, seniority, and pension benefits from the effective date of his suspension with Pohatcong.

Finally, I **ORDER** that Radecky be awarded all reasonable counsel fees incurred in this proceeding under N.J.A.C. 4A:2-2.12.

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 under N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked

"Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

December 31, 2024

DATE



PATRICE E. HOBBS, ALJ

Date Received at Agency:

December 31, 2024

Date Mailed to Parties:

December 31, 2024

APPENDIX

Witnesses

For Petitioner:

Matthew Radecky

For Respondent:

Chief Scott Robb

Sergeant Ryan Barsony

Detective Charles McGuinness

Exhibits

Joint Exhibits:

- J-1 Final Notice of Disciplinary Action, dated February 15, 2024
- J-2 Final Notice of Disciplinary Action, dated May 8, 2024
- J-3 Rules and Regulations of the Township of Pohatcong Police Department

For Petitioner:

- P-2 Decision of Civil Service Commission, dated May 3, 2023
- P-4 Emails between Chief Robb and Matthew Radecky, dated August 29, 2023
- P-5 Not in evidence
- P-6 Emails between Chief Robb and Matthew Radecky, dated September 1, 2023
- P-14 Email from PBA President Jim Vernon, dated October 3, 2023, regarding a conversation with Chief Robb
- P-17 Text message between Jim Vernon and Matthew Radecky
- P-18 Call log regarding a conversation between Jim Vernon
- P-21 Office of the Attorney General Internal Affairs Policies and Procedures

- P-24 Township Internal Investigations and Professional Standards.
- P-26 Email from PBA President Jim Vernon, dated October 3, 2023, regarding a conversation with Chief Robb
- P-27 Internal Affairs Investigation Report, dated September 18, 2023

For Respondent:

- R-1 Final Notice of Disciplinary Action, dated February 15, 2024
- R-2 Decision of the Civil Service Commission in CSC Docket Nos. 2022-2658 and 2022-3018, dated May 3, 2023
- R-3 Internal Affairs Investigation Report 23-D-002, dated September 18, 2023
- R-4 Report of Chief Scott Robb regarding the conduct of Sgt. Matthew Radecky on August 31, 2023
- R-5 Summary, Recommendations and Conclusions as to Matthew Radecky by Lewis G. Schlosser, PhD, ABPP
- R-6 Email chain between Chief Robb and Sgt. Radecky on August 23, 2023
- R-7 Email chain between Chief Robb and Sgt. Radecky on August 29, 2023
- R-8 Memo to Sgt. Radecky from Chief Robb regarding Fitness for Duty/Conditions of Employment, dated August 31, 2023
- R-9 Operations Directive 23-002 to Sgt. Radecky from Chief Robb, dated September 1, 2023
- R-10 Operations Directive 23-001 to Sgt. Radecky from Chief Robb, dated September 1, 2023
- R-11 Operations Directive 23-003 to Sgt. Radecky from Chief Robb, dated September 1, 2023
- R-12 Email chain between Chief Robb and Sgt. Radecky on September 1, 2023, with attachments
- R-13 Final Notice of Disciplinary Action, dated May 8, 2024
- R-14 Text messages between Chief Robb and Sgt. Radecky, December 18 and 20, 2023
- R-15 Text messages between Chief Robb and Sgt. Radecky, December 20 and 21, 2023

- R-17 Pohatcong Township Police Department Internal Affairs Notification, dated September 19, 2023
- R-18 Internal Affairs Investigation Report 23-D-001, dated January 4, 2024
- R-19 Rules and Regulations for Township of Pohatcong Police Department
- R-20 Pohatcong Township Police Department Standard Operative Procedure, Sick Leave and Workers Compensation Leave
- R-21 Email chain between Chief Robb and Sgt. Radecky, dated December 13 and 15, 2023

The nonsequential numbering of exhibits reflects the fact that numerous pre-marked exhibits were neither identified nor offered into evidence.