



## STATE OF NEW JERSEY

In the Matter of Joseph Howe, Cape  
May County, Sheriff's Department

CSC DKT. NO. 2025-1449  
OAL DKT. NO. CSR 02128-25

**DECISION OF THE  
CIVIL SERVICE COMMISSION**

**ISSUED: JULY 2, 2025**

The appeal of Joseph Howe, County Correctional Police Officer, Cape May County, Sheriff's Department, removal, effective July 17, 2024, on charges, was heard by Administrative Law Judge Kathleen M. Calemme (ALJ), who rendered her initial decision on June 3, 2025. Exceptions were filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, including a thorough review of the exceptions, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting of July 2, 2025, remanded the matter to the Office of Administrative Law.

This matter is remanded solely for one issue. Namely, in the initial decision, the ALJ notes that the appellant believed that "[t]he information written on the Evaluation were [his] concerns, entitled to protection under the First Amendment." No other mention is made thereafter in that regard. However, the Commission believes that whether the information written is protected, in this context, is not a settled question. As such, the Commission requires the ALJ to provide a more thorough legal analysis as to how or if the information written on the form by the appellant is, indeed, entitled to protection under the First Amendment. If there is a basis for such information to be afforded such protection, that provides an additional reason as to why the proffered charges should be dismissed. Conversely, if the analysis demonstrates that the information is not so protected, the ALJ should reexamine her determinations. Given the nature of the remand, it is at the discretion of the ALJ as to whether any further proceedings are required or whether she can accomplish the above without such proceedings.

ORDER

The Civil Service Commission orders that this matter be remanded to the Office of Administrative Law.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 2<sup>ND</sup> DAY OF JULY, 2025



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Allison Chris Myers  
Chairperson  
Civil Service Commission

Inquiries  
and  
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Nicholas F. Angiulo  
Director  
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Attachment



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

**INITIAL DECISION**

OAL DKT. NO. CSR 02128-25

AGENCY DKT. NO. N/A

**IN THE MATTER OF JOSEPH HOWE,  
CAPE MAY COUNTY SHERIFF'S DEPARTMENT.**

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**Michael C. Mormando, Esq.,** for appellant, (Attorneys Hartman Chartered,  
attorneys)

**William G. Blaney, Esq.,** for respondent, (Blaney, Donahue and Weinberg, P.C.,  
attorneys)

Record Closed: May 15, 2025

Decided: June 3, 2025

**BEFORE KATHLEEN M. CALEMMO, ALJ**

**STATEMENT OF THE CASE**

Appellant, Joseph Howe (Howe), appealed his removal, effective July 17, 2024, by the respondent, Cape May County Sheriff's Department (Sheriff's Office), arising from incidents which caused respondent to question Howe's ability to be trusted to maintain the health, safety and welfare of all inmates, regardless of race, creed, religion or other protected status. The Sheriff's Office sustained the charges contained in the Final Notice of Disciplinary Action (FNDA), dated January 14, 2025: N.J.A.C. 4A:2-2.3(a)(2) – Insubordination; N.J.A.C. 4A:2-2.3(a)(6) – Conduct Unbecoming a Public Employee; N.J.A.C. 4A:2-2.3(a)(7) – Neglect of Duty; N.J.A.C. 4A:2-2.3(a)(9) – Discrimination that affects equal employment opportunity; and N.J.A.C. 4A:2-2.3(a)(12) – Other Sufficient

Cause, including violations of the Cape May County Sheriff's Office Rules and Standard Operating Procedure 213 – Harassment in the Workplace. (J-1.)

### **PROCEDURAL HISTORY**

Appellant filed a direct filing removal appeal to the Office of Administrative Law (OAL), where it was filed on January 22, 2025, as a contested case pursuant to N.J.S.A. 52:14B-1 to 15; N.J.S.A. 52: 14F-1 to 13. The appeal was perfected the same day.

The hearing occurred on May 13, 2025, and May 15, 2025, and the record closed.

### **FACTUAL DISCUSSION**

The following salient facts are not in dispute. Therefore, they are **FOUND** as **FACT**:

Howe started his employment with the Sheriff's Office on October 1, 2023, prior to entering the Atlantic County Police Training Center (Academy). Howe entered the Academy in December 2023 and graduated on April 19, 2024. After graduation, he entered his one-year probationary period as a county corrections police officer responsible for the day-to-day operations of the correctional center, inmate care, custody, and transportation, and other related duties as assigned by the warden.

Prior to graduating from the Academy, the recruits were instructed to complete an Instructor Evaluation Form (Evaluation). The written instructions asked for honest and thoughtful answers. The Evaluation was seven pages. At the bottom of the first page, Howe wrote:

AA and EO was nothing but antiwhite narrative propaganda. Should be removed and replaced with classes on the Go Free Method and White Wellbeing, taught by Jason Kohne. He can be contacted on his site: NoWhiteGuilt.org. Also material presented in "civil rights" class was all untrue antiwhite narrative propaganda. NoWhiteGuilt.org.

[J-3.]

On page 5 of 7, under his evaluation of Det. Santoro, Howe wrote:

Seemed knowledgeable of FA. Went to fast. Should check information when mentioning antiwhite narrative propaganda from mainstream media like "NYC bike "Karen" story.

[Ibid.]

On page 6 of 7, under the sub-section asking if there was anything the recruit would remove from the program, Howe responded:

AA/EO, all untrue/immoral, antiwhite narrative propaganda. Also "karen" is an antiwhite slur and should be treated as such, the same as slurs for non-whites are.

[Ibid.]

The recruits at the Academy, who read Howe's Evaluation, cautioned Howe not to submit it. Howe signed his Evaluation and submitted it.

After graduation, Director Edward Thornton reviewed the Evaluations submitted by the recruits. After reading Howe's comments, he called Captain Magill, the operational commander for the Cape May County Correctional Center (facility), where Howe was employed to express his concern. Director Thornton sent a copy of Howe's Evaluation to the facility where it was reviewed by Captain Magill, Warden Lombardo, Undersheriff Maher, and Sheriff Nolan.

On April 25, 2024, Warden Lombardo opened a General Investigation (GI), assigned number 24-08, into the potential impact on the facility from Howe's comments. (P-3.) Because many of Howe's references were unknown, Lombardo instructed Lieutenant Weatherby to research the website and materials highlighted by Howe in his Evaluation. (C-3.)

On April 29, 2024, Warden Lombardo, in the presence of Captain Magill, met with Howe, in the warden's office. The discussion centered on three items. The first item was Howe's lack of a vehicle, the second item addressed firearm security issues, and the third item was the concern caused by Howe's comments on the Evaluation. Howe endorsed his opinions written on the Evaluation. He expressed his belief that the only reason he was even being questioned was because he is white. After discussions about Howe's obligation as a sworn officer, Warden Lombardo provided Howe with a copy of the Standard Operating Procedure (SOP) concerning harassment in the workplace to promote a healthy and productive work environment. (C-8.) The warden also provided Howe with a copy of the following Rules and Regulations: 4.10.2 – impartial attitude; 4.10.6, subversive organizations; and 4.10.7, affiliations with radical groups. (C-9.)

Warden Lombardo instructed Howe to write a report memorializing their meeting. On April 29, 2024, Howe drafted a Special Report. (C-7.) Howe noted the first two items and expounded on the third item. Howe expressed his concerns that the materials offered by the Academy presented and created an anti-white culture that he perceived as hostile. Ibid. He did not mention the material given to him by the Warden or any concerns the Warden may have expressed.

On April 29, 2024, Warden Lombardo issued a Special Report to Undersheriff Maher. (C-6.) Lombardo also mentioned all three items discussed. Regarding the third item, Lombardo wrote:

I explained to him his obligation as a sworn officer and the responsibility he has at all times representing the Office of the Sheriff. I also spoke about workplace speech and his responsibility as a caretaker of inmates of all races, creeds, and religions.

...

I concluded the meeting by directing C/O Howe to submit a report to me by the end of the business day on May 3, 2024 memorializing our three (3) topics of discussion. In addition, I provided C/O Howe several documents relevant to the topics.

[Ibid.]

On April 30, 2025, Officer Wainwright in the presence of Officer Womack confronted Howe in the facility about what he had written. Howe wrote his special report on a facility computer used by all the officers but he saved it to his personal folder. Unbeknownst to Howe, his personal folder was not private. It was accessible to any officer using the computer, who wanted to open it. After realizing that Wainwright had read his report, Howe responded to Wainwright's questions and a general discussion about the topics in the report and Evaluation followed. The discussion ended when they were required to return to work.

On May 2, 2025, under the authority of Undersheriff Maher, Warden Lombardo issued a request for an Internal Affairs (IA) investigation. (C-2.) On May 3, 2024, Howe was notified that an IA complaint had been made against him. As stated in the notification, the complaint involved an allegation of "deferential treatment, insubordination, and conduct unbecoming which occurred on or about April 2024." (P-2.) As of May 2, 2024, Howe was placed on administrative leave. (C-2.)

The IA investigation was assigned to Detective Sergeant Perry, who authored the investigation report, dated May 21, 2024. (C-1.) Perry interviewed Officers Womack and Wainwright, who admitted they had a discussion with Howe in the facility, initiated by Wainwright, after Howe had met with Warden Lombardo. Perry also interviewed the seven officers who attended the Academy with Howe, who after reviewing Howe's comments on his Evaluation, cautioned him against submitting it. Perry interviewed Howe, who was represented by counsel. Like Wainwright and Womack, Howe confirmed his discussion with those officers after they approached him and questioned him. Howe explained his beliefs regarding society's negative view of white people and his rejection of the concept of "white privilege." Ibid. In her summary, Perry wrote:

Officer Howe admitted to having a discussion in the workplace with Officer Wainwright and Officer Womack after his meeting with Warden Lombardo and Captain Magill. Officer Wainwright read Officer Howe's report that was saved in Officer Howe's folder and then asked for clarification of Officer Howe's report.

Officer Howe expressed his beliefs that validated some of the complaints.

[Ibid.]

Perry submitted her investigation report to Warden Lombardo, who sent it to Sheriff Nolan for review. (C-2.) Before the investigation was completed, Sheriff Nolan referred Howe for a fitness for duty psychological examination. Howe passed. In consultation with counsel, further interviews with Weatherby, Womack, and Wainwright were conducted. Ibid.

On July 17, 2024, Undersheriff Maher issued the Preliminary Notice of Discipline (PNDA) that the Warden personally served on Howe the same day, suspending him without pay and seeking removal. (J-1.) Howe waived his right to a departmental hearing. The Sheriff's Office issued an FNDA, which was emailed to Howe's attorney on January 15, 2025. (J-2.)

### **Testimony**

The following is not a verbatim recitation of the testimony, but a summary of pertinent testimony in areas of dispute.

**Captain Charles William Magill, Jr.** was present for the meeting with Warden Lombardo and Howe on April 29, 2025. Magill's immediate reaction after reading Howe's Evaluation was to make sure that Howe's comments were not meant as a joke. When Howe confirmed his beliefs, Magill recalled the Warden telling him to cease and desist from talking like that in the facility because his language could be construed as harassment. Magill's understanding of why Lombardo asked Howe to write a memorializing report was to solidify Howe's understanding that he could not talk like that in the facility.



**Warden Donald James Lombardo** testified that the purpose of the April 29, 2024, meeting was to address the issue of harassment in the workplace. Because Howe had just returned from the Academy, Lombardo intended to address the concerns that stemmed from Howe's comments in a positive manner and move forward. He gave Howe the SOP, so that Howe would understand that discussions with racial connotations were not permitted in the workplace. Lombardo also discussed the rules and regulations requiring the importance of an impartial attitude and the prohibition against membership in a subversive group or affiliation with radical groups. Howe's comments during the meeting alarmed Lombardo because Howe used this opportunity to reiterate his own views on anti-white bias.

Lombardo asked Howe to issue a report memorializing their meeting. Howe's report was technically accurate but Lombardo believed it missed the point of the meeting. Lombardo wanted Howe to acknowledge that he understood what was expected of him under the SOP and the rules and regulations going forward. Instead, Howe used the report to further espouse his beliefs.

**Lieutenant William Weatherby** is chief of security at the facility. Warden Lombardo instructed him to research the information Howe provided on his Evaluation. (C-3.) According to the research, Jason Kohne, the instructor recommended by Howe, was labeled as a white supremacist. In his report, Weatherby highlighted Kohne's posts that he considered were extremely concerning for the safety and well-being of the facility. Weatherby acknowledged that the language in Kohne's posts promoted white wellbeing. Weatherby did not read anything that advocated violence. On April 29, 2024, Weatherby submitted his report to Warden Lombardo.

**Detective Sergeant Kourtney Lynne Perry** conducted the IA investigation. In her investigation, Perry did not discover any complaints from inmates, staff, or officers about Howe.

**Officer Erick Womack** trained Howe when Howe was a Field Training Officer assigned to Housing Unit 2. Womack could not recall the date and could not even recall if the conversation occurred before or after Howe's Academy training, but he remembered a conversation with Howe when Howe referred to an inmate as "militant." It was determined that this conversation had to occur prior to Howe's time at the Academy. On July 3, 2024, Womack was directed to write a Special Report about the conversation as part of the IA investigation. (C-5.) When asked who directed him to write the report, Womack only knew it was a member of the Administration. Womack recalled that he questioned Howe's choice of the word "militant" and a discussion ensued about Malcolm X, Dr. Martin Luther King, Jr., slavery, and race relations. After the conversation ended, Womack continued to train Howe and to work with him. Womack testified that he reported Howe's comments to his duty sergeant but there was no written report.

Womack also testified that after Howe returned from the Academy there were rumors about what Howe had written in his Evaluation and Special Report. Womack read the Special Report from Howe's folder. Womack was at his post in Housing Unit 2 with Wainwright, when Howe entered the room. Wainwright asked Howe to clarify what he meant in the report. Howe reiterated his views and the three officers talked until they had to get back to work. Womack issued a Special Report on May 3, 2024, describing what occurred on April 30, 2025. Although the discussion began by referring to Howe's Special Report, dated April 29, 2024 (C-7), when shown the document at the hearing Womack did not recognize it. Womack considered some of Howe's statements to be racist and aligned with white supremacy.

**Officer Joseph Wainwright Jr.** testified that on April 30, 2024, all the officers were talking about Howe's report. When Howe entered the room, Wainwright confronted him about it and asked him to clarify his statements. During the hearing, when Wainwright was shown a copy of Howe's Special Report, dated April 29, 2024, he did not recognize it. Likewise, Wainwright did not recognize the Evaluation written by Howe while at the Academy.

Wainwright recalled the conversation as not being heated or threatening in any manner and lasting approximately ten minutes. Howe gave a detailed account of his beliefs. Wainwright commented that Howe was not afraid to express his views. He also noted that if you asked Howe a question, he would give you a detailed answer. Wainwright was not aware of any inmates complaining about treatment from Howe. During his IA interview, Wainwright stated he could work with Howe.

**Executive Undersheriff David Maher** is the designated IA officer who approved the IA investigation of Howe. After Perry's investigation, Maher received the IA file, reviewed Perry's report, and had discussions with Sheriff Nolan and counsel. Maher was involved in the decision with Sheriff Nolan and counsel to remove Howe. The basis for the removal began with Howe's comments on the Evaluation. Maher's directive to Warden Lombardo to instruct Howe to cease and desist, led to Howe's meeting with Lombardo and Magill. Howe's discussion with Womack and Wainwright about the meeting the next day caused the insubordination charge because Howe had been instructed about appropriate speech in the workplace and ignored the instruction.

According to Maher, the insubordination gave rise to the conduct unbecoming charge. Maher testified that it is the obligation of the Sheriff to ensure that public service is delivered in a safe and effective manner. Maher had a significant concern whether Howe could safely and effectively deliver all necessary services to the inmates. Because of the way Howe expressed his views, Maher had grave concerns whether Howe could be impartial in his duties and questioned his suitability as a corrections officer supervising non-white inmates. As a police corrections officer, Howe is held to a higher level of accountability to promote and maintain public trust. Maher questioned whether Howe's conduct and future conduct would hamper the level of confidence the public would have in the ability of the facility to deliver impartial service. When questioned how the public would know, Maher stated that the Sheriff represents the public.

According to Maher, Howe was removed for his insubordination and conduct unbecoming a public employee. He believed removal was appropriate even though Howe had no prior disciplinary history and no complaints of harassment against him.

On cross-examination, Maher acknowledged that Howe's meeting with Warden Lombardo was not part of an IA investigation. Under the Rules and Regulations, correction officers are forbidden from discussing matters pertaining to an IA investigation, litigation, or anything deemed confidential by the Sheriff. (C-9, 4.1.1(a).) Mayer believed Howe should have known from his meeting with the Warden that engaging in inappropriate discussions involving race in the workplace was not permitted. The insubordination claim was solely related to Howe's discussion of his views and beliefs with Womack and Wainwright the day after his meeting with the Warden. The removal was due to the way Howe expressed his views and the concerns with allowing Howe to supervise inmates that are non-white.

**Joseph Ryan Howe** spent five years in the Marine Corp before his honorable discharge in 2013. He was hired by the Sheriff's Office in September 2023 and started working on October 1, 2023. In December, he was sent to the Academy for training and assigned to A Squad. Howe discussed his views about anti-white bias, the holocaust, and slave food with members of his squad, while driving to and from the Academy. Howe recalled discussions and disagreements but never arguments.

Right before graduation, all the recruits were handed an Evaluation to be completed. Initially, Howe just completed the Evaluation, without much thought or detail. When a respected instructor challenged the recruits to take it seriously and not be cowards, Howe decided to write his honest assessment of the way the curriculum was slanted against whites. Because Howe was taking a long time to complete his Evaluation, the duty leader started to rush him. At one point, his Evaluation was grabbed by Recruit Garcia, who read some of the comments and passed it to the other recruits. The consensus from the other recruits was that Howe should not turn his Evaluation in for review.

Graduation was on Friday and Howe's first shift back at the facility was on Sunday. On Monday morning, April 29, 2024, Captain Magill asked Howe to accompany him to the Warden's office. The meeting started with a discussion about Howe's plans to obtain a vehicle. The next topic concerned securing his firearm off duty or when going to the range. After those topics, Howe thought he was free to go, until Warden Lombardo asked

him if he was a racist. Howe testified that he rejects the concept of racism and does not discriminate on any basis. Warden Lombardo gave him documents to review, which he read. Howe asked if he was fired. Warden Lombardo told him that a decision had not been made to fire him.

After the meeting, Howe understood that he was to follow the SOP and the rules and regulations when performing his duties. Howe never heard the words "cease and desist," nor did he believe it had any bearing on what was discussed with Warden Lombardo.

When Lombardo asked for a memorializing report, Howe wrote it on a computer that is used by all the officers. (C-7.) He saved it to his personal file but was unaware that his file could be viewed by other officers. Howe was never told his meeting was confidential or that his report should be secured in a private setting. The next day, in front of other officers, Wainwright approached him and told him that he had read his report and asked for clarification. From that contact, a discussion ensued among Wainwright, Womack, and Howe that covered Howe's statements on his Evaluation and his words on the Special Report. Howe considered Womack and Wainwright to be superior officers, and they had trained him before he attended the Academy. He did not believe he was under an order from Warden Lombardo not to discuss his views, especially in response to a direct question. As a former marine, Howe stated he would have followed an order had it been given. Howe did not believe that the conversation was inappropriate. When the conversation ended, no one seemed upset, they all returned to work.

Howe also recalled the earlier conversation with Womack about the militancy of Malcolm X and Dr. King.

### **ADDITIONAL FINDINGS**

Perry's investigation report is embedded with hearsay evidence. (R-1.) Hearsay evidence is admissible in the hearing of contested cases. However, it shall only be accorded whatever weight is deemed appropriate considering the nature, character, and scope of the evidence, the circumstances of its creation and production, and, generally, its reliability. N.J.A.C. 1:1-15.5(a). While hearsay evidence is admissible, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness. N.J.A.C. 1:1-15.5(b).

Our Supreme Court has found that the residuum rule, N.J.A.C. 1:1-15.5(a) and (b), permits hearsay evidence to corroborate or strengthen competent proof, so long as the final administrative decision is not based solely on hearsay evidence and contains "a residuum of legal and competent evidence in the record to support [the decision]." Weston v. State, 60 N.J. 36, 51 (1972).

While the statements attributable to the recruits at the Academy are hearsay statements, Howe's testimony corroborated much of what was contained in Perry's investigation. None of the statements about the holocaust, slave food, or anything that was said during Howe's time at the Academy was relevant to the charges against Howe or the discipline imposed. Accordingly, the specific comments attributable to Howe by the recruits contained in the investigation report were given no weight. However, I **FIND** that a relevant aspect of Perry's investigation revealed that Howe's views and beliefs are well known within the facility because the Evaluation was read by the recruits, who are now correction officers working with Howe in the facility. This supported the concern that Howe's views could tend to erode public confidence in the impartiality of the facility.

It is also the obligation of the fact finder to weigh the credibility of the witnesses, and consider the witness' interest in the outcome, motive, or bias. Credibility is the value that a fact finder gives to a witness' testimony. Credibility is best described as that quality of testimony or evidence that makes it worthy of belief. "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must

be such as the common experience and observations of mankind can approve as probable in the circumstances.” In re Estate of Perrone, 5 N.J. 514, 522 (1950).

Director Thornton, Captain Magill, Warden Lombardo, and Undersheriff Maher are dedicated, experienced, sworn officers of integrity. It was clear from their testimony that they were concerned about the impact Howe’s statements would have on the facility, especially the non-white inmate population. They all admitted that they were unfamiliar with the concepts and the beliefs espoused by Howe. I accept that they were motivated by their duty to protect and defend the reputation of the Sheriff’s Office and to prevent harassment in the workplace. I also accept the believable testimony from Director Thornton, Captain Magill, Warden Lombardo, and Undersheriff Maher that they were concerned by what they read on Howe’s Evaluation and motivated to prevent discriminatory and extremist views in the workplace.

The Evaluation caused concern but according to the testimony it did not trigger the IA investigation. The testimony was consistent that the IA investigation was triggered by Howe’s conversation with Womack and Wainwright on April 30, 2024, after Howe’s meeting with Warden Lombardo on April 29, 2024.

Based on the credible testimony and the documentary evidence, I **FIND** as follows:

#### Insubordination

The Rules and Regulations define insubordination as the “[f]ailure or deliberate refusal of any member or employee to obey all lawful orders given by a superior.” (C-9, at 2.2.15.) The only three witnesses who were present during the meeting on April 29, 2025, when Howe was allegedly told to cease and desist were Magill, Lombardo, and Howe. Howe and Lombardo in their reports memorializing the meeting did not use the phrase “cease and desist.” Magill described that Lombardo “basically” told Howe to cease and desist because this was not the type of language Howe should be using within the facility. Lombardo testified that the purpose of the meeting was to address the issue of harassment and make sure that it ceases and desists. In Lombardo’s report to Undersheriff Maher after the meeting (C-6), Lombardo never stated that he issued an

order. Lombardo wrote that he “explained” to Howe his obligation as a sworn officer. Ibid. He also wrote that he discussed workplace speech and Howe’s responsibility as a caretaker of inmates of all races.

“An order shall be delivered in clear understandable language.” (C-9, 4.1.14.) Lombardo advised Howe of his sworn obligation to abide by SOP 213. (C-8.) Howe’s memorializing statement (C-7) did not contain anything about harassment. Rather, it reiterated his concerns about what he believed was an anti-white discriminatory culture at the Academy. Warden Lombardo testified that the purpose of the April 29, 2024, meeting was to discuss the prohibition against harassment in the workplace and to prevent Howe from committing harassment in the facility. Other than providing Howe with copies of the SOP and the Rules and Regulations that he was always obligated to obey, there was nothing provided in this record to show that Warden Lombardo expressly, plainly, and clearly told Howe what he was prevented from doing after their meeting. As a result, there was no clear understandable order given to Howe to support the insubordination charge.

#### Conduct unbecoming a public employee

Womack and Howe had two conversations that Howe used as opportunities to express his beliefs. The first conversation occurred prior to Howe’s attendance at the academy, when Howe referred to an inmate while working under the supervision of Womack as “militant.” In his report, dated July 3, 2024, Womack attributed certain words to Howe that he put in quotation marks. (C-5.) While I have no reservation based on the testimony of Womack and Howe that this conversation occurred, I do not accept that the statements in quotes represented Howe’s exact words. Given the passage of time, six months, and Womack’s lack of direct recollection, it is not credible to accept the quoted language as a reliable reference for what was said. While Howe denied the exact language attributable to him by Womack, it was clear from Howe’s testimony that he used this opportunity to espouse his beliefs and denigrate Malcolm X and Dr. King. While testifying, Howe used the name “Michael” not Martin when referring to Dr. King. In debating with Womack, Howe appeared to question Womack’s college education and understanding of history. While testifying, Howe would attempt to incorporate many



different topics which he believed supported his view of history and race relations. Relevant to this appeal, I do accept that Womack felt uncomfortable with the direction of the conversation and the need to end it. Womack wrote on his statement that he ended the conversation and continued to train Howe. (C-5.) Womack testified that he reported the conversation to his sergeant. However, there were no details of that report provided and it did not result in any discipline to Howe. Womack never filed any harassment charges against Howe. Howe never attempted to continue the conversation against the wishes of Womack.

Womack's second conversation with Howe and Wainwright is not disputed. (C-4.) This conversation only occurred because Wainwright instigated it by questioning Howe about what he had written. Harassing conduct must be unwelcome and coercive. (C-9, 3.1.1.) There was no indication from the testimony that Womack and Wainwright felt intimidated or coerced by Howe.

In assessing the credibility of Howe's testimony, it was clear that Howe was motivated in answering every question by advocating for his cause.

### **LEGAL ANALYSIS AND CONCLUSION**

The New Jersey Supreme Court in West New York v. Bock, 38 N.J. 500, 522 (1962) stated that "[p]roperly stated charges are a *sine qua non* of a valid disciplinary proceeding." The charges are contained in the attachment to the FNDA. (J-2.)

Respondent seeks the termination of Howe for his conversations about his views and thoughts that respondent believed promoted a racial bias that is antithetical to a workplace designed to protect and serve inmates of all races, religions, and creeds.

Appellant raised multiple arguments advocating why this matter should be dismissed and Howe reinstated to his position as a corrections officer. Howe maintained that the charges against him were not brought within forty-days in violation of N.J.S.A. 30:8-18.2. Howe questioned how his conversation with Womack when he was a field training officer had any relevance to this IA investigation and questioned the timing as

suspicious. Howe questioned the legitimacy of the general investigation, when he was denied notice and the right to counsel. As the Administration had no understanding of Howe's beliefs as advocating for equal treatment for everybody, including white people, Howe was unfairly targeted, for bringing his perceived mistreatment and hostile work environment to his superiors. The information written on the Evaluation were Howe's concerns, entitled to protection under the First Amendment. Based on the four corners of the FNDA, Howe maintains that he is entitled to a dismissal of all charges.

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

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

The appointing authority employer has the burden of proof to establish the truth of the 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 credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); see Atkinson v. Parsekian, 37 N.J. 143, 149 (1962).

As set forth in the FNDA, the sustained charges were as follows:

**N.J.A.C. 4A:2-2.3(a)(2) - Insubordination**

"Insubordination" has been defined as a failure to obey a lawful order. In re Williams, 443 N.J. Super. 532, 403 (App. Div. 2016). Respondent failed to establish that Warden Lombardo issued a clear and understandable order to Howe during their meeting on April 29, 2025. The meeting, on April 29, 2024, was not part of the IA investigation, and there was no indication from Warden Lombardo or Captain Magill that Howe was informed to keep the contents of the meeting confidential. Thus, respondent failed to establish that Howe was insubordinate when he had a subsequent conversation with Officers Womack and Wainwright on April 30, 2025. Accordingly, I **CONCLUDE** that respondent has failed to prove the charge of insubordination and that charge is **DISMISSED**.

**N.J.A.C. 4A:2-2.3(a)(6)—Conduct Unbecoming a Public Employee**

Conduct unbecoming a public employee is an elastic phrase that encompasses conduct that "adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services." Karins v. City of Atl. City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances "be such as to offend publicly accepted standards of decency." Karins, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not necessarily "be predicated upon the violation of any particular rule or regulation but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955)).

Appellant's status as a correction officer subjects him to a higher standard of conduct than an ordinary public employee. In re Phillips, 117 N.J. 567, 576–77 (1990). Law-enforcement employees, such as a correction officer, represent "law and order to the

citizenry and must present an image of personal integrity and dependability in order to have the respect of the public." Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). In military-like settings such as police departments and prisons, it is of paramount importance to maintain strict discipline of employees. Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 59 N.J. 269 (1971); Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967).

As a correction officer, Howe represents law and order to the public and must present an image of personal integrity. Howe's unbecoming conduct was stating his beliefs that there exists an anti-white bias in response to direct questions. There is no indication based on this record that Howe provided unsolicited statements promoting harassment of any protected class. There is no indication of any mistreatment, malfeasance, or failure to attend to the needs of any inmate. There is no question that appellant's views and beliefs caused legitimate concern. However, there was nothing in Howe's conduct that demonstrated his inability to be trusted to maintain the health, safety, and welfare of all inmates, regardless of race, creed, religion, or other protected class.

Arguably, Howe's conversation with Womack prior to his attendance at the Academy was conduct that jeopardized the morale and efficiency of the facility and singled out an inmate as "militant" based on race. Womack, as an African American officer questioned the term "militant" and was offended by Howe's unsolicited comments about Malcolm X, Dr. King, and slavery. While this conversation was used by respondent to show Howe's inappropriate conduct in the facility, it was not identified as a specific incident that gave rise to the charges for removal. It was never identified in the IA reporting complaint notification that referenced incidents "on or about April 2024." (P-2.) This conversation occurred at least six months earlier. Respondent only alleged in the FNDA that Howe had conversations that had racial connotations. (J-2.) Although Womack testified that the conversation was inappropriate, he ended it and continued to work with Howe, with no apparent repercussions or further incidents.

For the foregoing reasons, I **CONCLUDE** that the respondent has not met its burden in establishing a violation of N.J.A.C. 4A:2-2.3(a)(6)—conduct unbecoming a public employee.

**N.J.A.C. 4A:2-2.3(a)(7) – Neglect of Duty**

Appellant also sustained charges for a violation of N.J.A.C. 4A:2-2.3(a)(7) neglect of duty. Neglect of duty can arise from an omission or failure to perform a duty as well as negligence. Generally, the term "neglect" connotes a deviation from normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div 1977). "Duty" signifies conformance to "the legal standard of reasonable conduct in the light of the apparent risk." Wytupeck v. Camden, 25 N.J. 450, 461 (1957). Neglect of duty can arise from omission to perform a required duty as well as from misconduct or misdoing. Cf. State v. Dunphy, 19 N.J. 531, 534 (1955). Although the term "neglect of duty" is not defined in the New Jersey Administrative Code, the charge has been interpreted to mean that an employee has neglected to perform and act as required by his or her job title or was negligent in its discharge. Avanti v. Dep't of Military and Veterans Affairs, 97 N.J.A.R.2d (CSV) 564; Ruggiero v. Jackson Twp. Dep't of Law and Safety, 92 N.J.A.R.2d (CSV) 214. In the present matter, respondent alleged that Howe had a conversation with Officers Womack and Wainwright about the content of his meeting with Warden Lombardo and "his thoughts and beliefs about certain inmates of protected classes." (J-2.) As there was no indication that Howe was not permitted to discuss his Special Report (C-7), Howe did not discuss confidential information. Moreover, while Howe directly answered questions and espoused his thoughts and beliefs, his comments were not directed at any inmate or specific member of the facility. Accordingly, I **CONCLUDE** that the appointing authority has not met its burden in demonstrating support to sustain a charge of neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)(7).

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

Respondent has not presented any evidence regarding this charge and it is hereby **DISMISSED**.

**N.J.A.C. 4A:2-2.3(a)(12)—Other Sufficient Cause**

For this charge, respondent charged Howe with violations of the Rules and Regulations, specifically, Insubordination, 2.1.15; Unbecoming conduct 4.1.1b; and Neglect of Duty, 4.1.7. For the reasons stated above those violations of the Rules and Regulations are **DISMISSED**.

Respondent also charged Howe with violating SOP 213, Harassment in the Workplace. Harassment is defined in the SOP as "discrimination or disparate treatment against any person because of their protected class that includes race." (C-8, 3.1.) Prohibited activities include ridiculing, mocking, deriding, or belittling any person. Prohibited activities also include making offensive or derogatory comments directly or indirectly to another person; hanging or posting anything that is offensive, derogatory, or prejudicial that could be embarrassing or offensive to others. (C-8, 4.2.) There was testimony from Captain Magill and Undersheriff Maher that Howe was told he could not talk like that in the facility. However, as I have previously determined the words "talk like that" are vague. As Howe's thoughts and beliefs were only expressed in relation to direct questions and not used to intimidate, harass, or offend any inmate or officer, I **CONCLUDE** there was nothing in the record to support that Howe engaged in discrimination or disparate treatment.

**ORDER**

It is hereby **ORDERED** that the disciplinary action of the respondent, Cape May County Sheriff's Office, in removing appellant, Joseph Howe, from his position as a correction officer on July 17, 2024, is hereby **REVERSED**. The appellant's appeal is **GRANTED**.

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.



June 3, 2025

DATE

KATHLEEN M. CALEMMO, ALJ

Date Received at Agency:

Date Mailed to Parties:

KMC/tat

**APPENDIX**

**WITNESSES**

**For Appellant**

Joseph Howe

**For Respondent**

Captain Charles William Magill, Jr.  
Warden Donald James Lombardo  
Director Edward Thornton  
Lieutenant William Weatherby  
Detective Sergeant Kourtney Lynne Perry  
Officer Erick Womack  
Officer Joseph Wainwright, Jr.  
Executive Undersheriff David Maher

**Exhibits**

**Joint:**

J-1 PNDA  
J-2 FNDA  
J-3 Evaluation

**For Petitioner/Appellant:**

P-1 Internal Affairs Report Form  
P-2 Internal Affairs Complaint Notification  
P-3 Investigative Chronology Case – GT 24-08



**For Respondent:**

- C-1 IA Report
- C-2 Investigative Chronology – I.A. CASE # 24-08
- C-3 Special Report – Weatherby, dated April 29, 2024
- C-4 Special Report – Womack, dated May 3, 2024
- C-5 Special Report – Womack, dated July 3, 2024
- C-6 Special Report – Lombardo, dated April 29, 2024
- C-7 Special Report – Howe, dated April 29, 2024
- C-8 SOP 213
- C-9 Rules and Regulations