



STATE OF NEW JERSEY

**DECISION OF THE
CIVIL SERVICE COMMISSION**

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

CSC DKT. NO. 2025-1449
OAL DKT. NO. CSV 12555-25
(On Remand OAL DKT. NO. CSR
02128-25)

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ISSUED: SEPTEMBER 29, 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. Calemno (ALJ), who rendered her initial decision on August 15, 2025. Exceptions were filed on behalf of the appellant and a reply was 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 reply, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting of September 24, 2025, did not adopt the ALJ's recommendation to uphold the removal. Rather, the Commission reversed the removal.

Procedural History

The ALJ originally decided this matter via a June 3, 2025, initial decision, where she recommended dismissing the charges and reversing the removal. Upon consideration of that decision at its July 2, 2025, meeting, the Commission remanded the case to the Office of Administrative Law. Specifically, the Commission stated:

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 . . . (emphasis added).

August 15, 2025, Initial Decision

In her initial decision on remand, the ALJ presented her legal analysis of whether the information provided by the appellant on the evaluation form was protected under the First Amendment, finding that it was not. As such, and as instructed in the Commission's remand decision, the ALJ undertook a thorough reexamination of her subsequent findings and conclusions. Most noteworthy, regarding the insubordination charge, the ALJ found:

When Warden Lombardo warned Howe that he could not express his beliefs about anti-white culture in the workplace, this was a lawful order that was not protected by the First Amendment. It was clear from Howe's testimony and his special report that he understood that the purpose of the meeting was to discuss what he had written on the Academy Instructor Evaluation. The only plausible reason for the meeting was Warden Lombardo's warning to Howe to cease all further such discussions. Thus, I **CONCLUDE** that Warden Lombardo issued a clear order to Howe not to engage in any further discussions about his views as written on the Academy Instructor Evaluation.

The next day, on April 30, 2024, when Officers Wainwright and Womack engaged Howe in a discussion about his beliefs and opinions on race as expressed in his special report and Academy Instructor Evaluation, Howe's ready response was insubordinate. Accordingly, I **CONCLUDE** that respondent has proven the charge of insubordination and that charge is **AFFIRMED**.

Based on the appellant's alleged inappropriate comments in his conversation with Officers Wainwright and Womack, the ALJ similarly upheld the charges of conduct unbecoming a public employee, neglect of duty and other sufficient cause.

In his exceptions, the appellant's contentions can be boiled down to one overarching concern, that the ALJ exceeded the scope of the Commission's remand by making new findings and determinations based solely on her finding that the appellant's evaluation form comments, for which he was not specifically charged,

were not protected under the First Amendment. The Commission rejects this contention. As quoted above, the Commission's remand ordered the ALJ, if she found the comments were not protected speech, to "reexamine her determinations." In her remand decision, that is exactly what the ALJ did. Further, she provided specific and detailed findings based on the actual charges and specifications proffered. As indicated above, once the ALJ found that the speech was not protected, she determined that the credible evidence in the record supported the charges of insubordination, conduct unbecoming a public employee, neglect of duty and other sufficient cause. Noteworthy in that regard is the ALJ's specific indication that as the appellant's speech was unprotected, his subsequent inappropriate comments during the Wainwright/Womack conversation were sanctionable. However, while the ALJ did not exceed the Commission's remand order, upon its *de novo* review, it cannot agree that the original comments written by the appellant on his evaluation form were not protected speech.

In this regard, law enforcement employees are held to a higher standing than a civilian public employee. See *Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). See also, *In re Phillips*, 117 N.J. 567 (1990). One of the paramount considerations in this regard is a law enforcement employee's veracity. In fact, municipal Police Officers in New Jersey who are untruthful risk the loss of their job and designation as an unreliable witness if called to testify. See e.g., *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972). In this matter, the appellant was asked while at the Training Academy to provide his honest assessment of his courses. It is important to realize that the Training Academy is an academic setting, where candid discussions on important public and social issues should be encouraged and not chilled. Moreover, the appellant's comments on the evaluation constituted his opinions and were not made "in the line of duty" or directly made to an individual. Accordingly, the appellant's opinions in this particular context and setting should be considered protected speech. As indicated in the Commission's remand decision, since it finds that the appellant's evaluation responses would be protected speech, it finds that as an *additional reason* to dismiss the charges and reverse the removal. As such, the Commission rejects the ALJ's August 15, 2025, initial decision, and adopts the Findings of Facts and Conclusions from the ALJ's June 3, 2025, initial decision.

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 July 17, 2024, through April 17, 2025. In this regard, the Commission notes that the appellant was still in his working test period when he was removed. Specifically, he received a regular appointment effective April 18, 2024, and was removed effective July 17, 2024. Since it cannot be assumed that the appellant would have successfully completed his working test period, he should only receive back pay from July 17, 2024 through April 17, 2025, which is the remainder of the working test period he did not complete. See *In the Matter of Justin Miller* (CSC, decided June 18, 2014); *In the Matter of Terrell Twiggs* (MSB, decided May 9, 2007), *In the Matter of Jennifer*

Mortimer (MSB, decided April 26, 2006) and *In the Matter of Rosalind Candelaria* (MSB, decided November 10, 1998). Any time after April 17, 2025, until the appellant's actual date of reinstatement shall be recorded as a leave of absence without pay. Further, upon his reinstatement, the appellant is required to complete the remainder of his working test period (approximately nine months). Moreover, as the removal has been reversed, the appellant is 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 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 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 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 Joseph Howe. The Commission further orders that the appellant be granted back pay, benefits, and seniority from July 17, 2024 through April 17, 2025. 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.

The Commission further orders that counsel fees be awarded to the attorney for the appellant 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:2.12, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay and counsel fees. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay or counsel fee 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 24TH DAY OF SEPTEMBER, 2025

A handwritten signature in cursive script that reads "Allison Chris Myers". The signature is written in dark ink and is positioned above a horizontal line.

Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 12555-25

AGENCY DKT. NO. N/A

(ON REMAND CSR 02128-25)

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

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: July 22, 2025

Decided: August 15, 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 or Department), 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. I issued the initial decision on June 3, 2025.

On July 2, 2025, the Civil Service Commission (Commission) remanded the matter solely for one issue. That issue concerns racial comments Howe made on an "Instructor Evaluation Form" while he was a recruit at the Atlantic County Police Training Center (Academy). On that form, which Howe and his fellow recruits were required to complete to provide feedback about the training they received, Howe referred to certain training material as "antiwhite narrative propaganda." (J-3.)

Although appellant's evaluation responses were not included in the charges against him, they were the catalyst for the charges after appellant expressed those same beliefs in the workplace. In his oral closing summation, appellant argued that his speech was entitled to protection under the First Amendment. The Commission now wants "a thorough legal analysis as to how or if the information written on the form by [Howe] is, indeed, entitled to protection under the First Amendment."

This decision on remand requires a legal analysis, so no further proceedings are required.

FACTUAL DISCUSSION

The uncontroverted **FACTS** incorporated from the Initial Decision are repeated for context.

Howe started his employment with the Sheriff's Office on October 1, 2023, prior to entering the 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.]

Fellow recruits at the Academy read Howe’s Evaluation and cautioned Howe not to submit it. Howe signed his Evaluation and submitted it.

After graduation, Director Edward Thornton reviewed all the Evaluations. 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.)

As instructed, Lieutenant Weatherby researched Jason Kohne and the website “Nowwhiteguilt.org.” His research revealed that Kohne was labeled as a White Nationalist. In an online post, Kohne wrote:

Become an advocate for the white wellbeing. Call out anti-white person’s and organizations. Protect children from anti-white indoctrination. Call out Anti-Whitism in all its forms. Support white positive persons and organizations. Help ensure the wellbeing of Western kind. READ: Go Free by Jason Kohne/visit NoWhiteGuilt.org. There is no Western Civilization without Westernkind.

[Ibid.]

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.)

Lombardo testified that he gave Howe a copy of 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. It was not alleged that Howe is a member of a subversive group or affiliated with any radical group.

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.

Lastly, we discussed concerns that were raised in regards to my submission of a survey seeking input from Recruits to the Academy regarding my concerns of the material presented creating an antiWhite environment and culture that is discriminatory, prejudiced, and ultimately hostile towards White members of the Law Enforcement Community and the general population. As well as recommendations that the Academy incorporate concepts such as White Positivity, White Wellbeing, and the Go Free Method, alongside or in place of classes on concepts such as Affirmative Action and Equal Opportunity, so as not to have a biased impact within

the classroom that will follow and influence Officers negatively throughout their careers as Law Enforcement Professionals and personal lives as Men and Women.

[Ibid.]

Howe did not mention the material given to him by the warden or any concerns the warden may have expressed about workplace speech.

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 informed C/O Howe that I do not know if he is a racist, but the content in the evaluation has the possibility of portraying himself as a racist. 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.

C/O Howe explained his views and he has very strong objections to all the current discussions and reporting of “white privilege.” He stated that this block of instruction alienated the “white’ members of the class and they discussed this as a group many times, specifically the concept of reparations. His remarks indicated that he was offended by contemporary opinions in society regarding “police brutality” and “slavery by white people.” He expressed concerns about allegations made in the media that “police officers stop black drivers because they are black, not because they are breaking the law.” His explanation somewhat concluded by him stating that if a “non-white” expressed concerns in this evaluation, the administration would be supportive of their position. He continued by implying that they would not be in the uncomfortable position that he is in. Captain Magill and I disagreed with him and informed him that he is specifically being interviewed now because of the disturbing manner in which he expressed himself in the beforementioned documents.

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.]

After the meeting with the warden, on April 30, 2025, Officer Wainwright in the presence of Officer Womack confronted Howe in the facility and asked him to explain what he had written in his special report. Howe wrote his special report on a facility computer used by all the officers. Although Howe saved it to his personal folder, it was apparently accessible to any officer using the computer. 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 his 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.) In the Internal Affairs Report Form, Warden Lombardo wrote:

On April 24, 2024, Captain Magill was notified by the Atlantic County Police Academy Director concerning C/O Howe's "instructor Evaluation Form". C/O Howe expressed in this form serious racial connotations.

On April 29, 2024, C/O Howe was interviewed by Captain Magill and me and he spoke at length regarding "White Privilege". C/O Howe was advised of the Standard Operating Procedures and Rules and Regulations regarding this type of conduct; C/O Howe was also provided the appropriate departmental documentation. Subsequently, C/O Howe continued this type of behavior in the workplace.

[P-1.]

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.

In his Special Report, dated May 3, 2024, Officer Womack described his April 30, 2024, conversation with Howe wherein Howe reiterated his belief that white men are oppressed people in America. (C-4.) Womack believed that Howe expressed the same feelings as a white supremacist. Ibid.

As part of the IA investigation, Womack also authored a Special Report, dated July 3, 2024. (C-5.) In this report, Womack described a conversation he had with Howe during Howe's Field Training Officer period.¹ That discussion began when Howe referred to an inmate as "militant." The discussion evolved into a lecture by Howe on his views of Malcolm X and Dr. Martin Luther King, Jr. Womack engaged and attempted to explain from an historical perspective the different philosophies of Malcolm X and Dr. King. Howe also brought up his views on slavery. Womack ended the conversation by telling Howe that going forward they were only going to talk about the job. Womack continued to train Howe². (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.)

The sustained charges against Howe were as follows: Insubordination - N.J.A.C. 4A:2-2.3(a)(2); Conduct Unbecoming a Public Employee - N.J.A.C. 4A:2-2.3(a)(6); Neglect of Duty - N.J.A.C. 4A:2-2.3(a)(7); Discrimination that affects equal employment opportunity - N.J.A.C. 4A:2-2.3(a)(9); and Other Sufficient Cause - N.J.A.C. 4A:2-2.3(a)(12), including violations of the Cape May County Sheriff's Office Rules and Regulations, and Standard Operating Procedure 213 – Harassment in the Workplace. (J-1.)

¹ Howe was a field training officer prior to entering the Atlantic County Police Academy in December 2023. Womack had been responsible for training Howe with respect to the performance of his duties in Housing Unit 2.

² While I have no reservation based on the testimony of Womack and Howe that this conversation occurred, I did not accept that the statements in quotes represented Howe's exact words. (C-5.) 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. Relevant to this appeal, I do accept that Womack felt uncomfortable with the direction of the conversation and the need to end it.

The incidents that gave rise to the charges are paraphrased as follows:

When Howe was a field training officer prior to his attendance at the Academy, he had conversations about his thoughts and beliefs about members of protected classes that had racial connotations. Howe was interviewed by jail administration about his responses on the Academy's Instructor Evaluation Form, which was alleged to contain racist connotations. During the interview, Howe spoke about his views on "white privilege." Warden Lombardo discussed harassment in the workplace and provided Howe with the applicable SOPs. He instructed Howe to write a memorializing report. Despite the meeting, Howe had conversations with fellow corrections officers about the contents of his report and his thoughts and beliefs about certain inmates of protected classes. (J-2.)

ISSUE ON REMAND

Whether the information written by Howe on the Academy's Instructor Evaluation Form is protected under the First Amendment.

LEGAL ANALYSIS

For the following reasons, Howe's comments on the "Instructor Evaluation Form" are not protected by the First Amendment.

Under United States Supreme Court free speech jurisprudence, there are "two inquiries to guide interpretation of the constitutional protections accorded to public employee speech." Garcetti v. Ceballos, 547 U.S. 410, 418 (2006).

The first inquiry is "whether the employee spoke as a citizen on a matter of public concern." "If the answer is no, the employee has no First Amendment cause of action based on his or her employer's reaction to the speech." "[I]f the answer is yes, then the possibility of a First Amendment claim arises." The second inquiry is then "whether the relevant government entity had an adequate justification for treating the employee differently from any other member of the general public." This

consideration reflects the importance of the relationship between the speaker's expressions and employment. A government entity has broader discretion to restrict speech when it acts in its role as employer, but the restrictions it imposes must be directed at speech that has some potential to affect the entity's operations.

[Ibid (quoting Pickering v. Bd. of Educ. of the Twp. High Sch. Dist. 205, 391 U.S. 563, 568 (1968); Connick v. Myers, 461 U.S. 138, 147 (1983)).]

Crucially, “when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.” Garcetti, 547 U.S. at 421. This is so because “[r]estricting speech that owes its existence to a public employee's professional responsibilities does not infringe any liberties the employee might have enjoyed as a private citizen[;] [i]t simply reflects the exercise of employer control over what the employer itself has commissioned or created.” Id. at 421-22.

In contrast, “[e]mployees who make public statements outside the course of performing their official duties retain some possibility of First Amendment protection because that is the kind of activity engaged in by citizens who do not work for the government,” like “writing a letter to a local newspaper, see *Pickering, supra*, or discussing politics with a co-worker, see *Rankin [v. McPherson]*, 483 U.S. 378 (1987).” Id. at 423-24. But “[w]hen a public employee speaks pursuant to employment responsibilities[,] there is no relevant analogue to speech by citizens who are not government employees.” Id. at 424.

Whether a public employee’s workplace speech is covered by the First Amendment comes down to whether he spoke as part of his “official duties.” To make this determination, the Third Circuit Court of Appeals has advised:

the line between citizen speech and employee speech varies with each case's circumstances, for we may not draw the line using such simple tests as whether the employee spoke “within the office,” whether his statements were made

pursuant to duties described in his "[f]ormal job description[]," or whether "speech concerns information related to or learned through public employment." We instead make a "practical" inquiry, and assess "whether the speech at issue is itself ordinarily within the scope of an employee's duties." If so, then it is employee speech and receives no First Amendment protection.

[De Ritis v. McGarrigle, 861 F.3d 444, 453 (3d Cir. 2017) (quoting Garcetti, 547 U.S. at 420-21, 424-25; Lane v. Franks, 134 S. Ct. 2369, 2377, 2379 (2014)).]

In this way, "the question of whether a particular incident of speech is made within a particular plaintiff's job duties is a mixed question of fact and law." Foraker v. Chaffinch, 501 F.3d 231, 240 (3d Cir. 2007). That is, "the scope and content of a plaintiff's job responsibilities is a question of fact, but the ultimate constitutional significance of those facts is a question of law." Flora v. Cnty. of Luzerne, 776 F.3d 169, 175 (3d Cir. 2015).

The Third Circuit has undertaken an "official duties" analysis in several free speech cases involving public employees. For example, in Dougherty v. Sch. Dist. of Philadelphia, 772 F.3d 979 (3d Cir. 2014), the Court found that a Philadelphia School District employee who had been fired after he spoke with the *Philadelphia Inquirer* about alleged wrongdoing by the superintendent in awarding a security camera contract "did not speak pursuant to his official duties" because his communications with the newspaper did not "[a]ll within the scope of his routine job responsibilities[.]" Id. at 988. Instead, "the School District appears to *discourage* such speech through its Code of Ethics' confidentiality provision;" thus, his "report to *The Philadelphia Inquirer* . . . was made as a citizen for First Amendment purposes and should not be foreclosed from constitutional protection." Ibid.

The Court reached a contrary conclusion in various free speech cases involving police officers. In Foraker, 501 F.3d 231, two former instructors in the Delaware State Police Firearms Training Unit did not engage in protected free speech when they complained to their superiors about health and safety conditions at the firing range because "[r]eporting problems at the firing range was among the tasks that [they] were paid to perform" and "within the scope of their routine operations." Id. at 241-42.

Similarly, in Santiago v. N.Y. & N.J. Port Auth., 687 Fed. Appx. 146 (3d Cir. Apr. 24, 2017), the Court determined that a Port Authority police officer acted within her official duties and “was not speaking as a citizen when she delivered to the chain of command a handwritten report regarding a safety incident involving another employee” prior to a truck accident near the Lincoln Tunnel. The Court considered several factors in reaching this conclusion. First, “[i]t is, of course, expected that a police officer will report risks to public safety up the chain of command,” especially “when the risk is caused by another employee of the government agency;” even though the officer’s handwritten report was neither required nor requested, “the filing of the report is still properly seen as being within her ordinary duties.” Id. at 150. Second, she “did not speak to the public, but directed her speech up the chain of command.” Id. at 151. Third, “the report was prepared while [she] was on duty.” Ibid. And fourth, “the fact that nearly every Port Authority employee who witnessed or responded to the accident ultimately filed a handwritten report . . . further demonstrates that, as a practical matter, it was plainly within her official duties.” Id. at 152.

Lastly, in FOP v. City of Camden, 842 F.3d 231 (3d Cir. 2016), Camden police officers did not engage in free speech when they complained about the city’s “directed patrols” policy on an internal police department form. As background, the Court explained that Camden’s “directed patrols” policy “require[d] police officers to engage with city residents even though the residents are not suspected of any wrongdoing.” Id. at 236. Several officers who were deemed “low performers” under the policy “objected to the policy on police department counseling forms, writing, among other things, ‘QUOTA[S] ARE ILLEGAL’” under New Jersey’s “anti-quota law [which] prohibits numerical requirements for arrests or citations.” Id. at 237, 243.

The Court acknowledged that “[t]he plaintiff-officers provide compelling arguments to support their claim that their speech involved a matter of public concern” and that even though “[t]hese writings were internal and arguably of a private nature . . . does not mean they do not pertain to a matter of public concern.” Id. at 243. Nonetheless, the Court concluded that the officers filled out the forms as part of their official duties and thus were not speaking as citizens:

The plaintiff-officers were not speaking as citizens when they wrote on the counseling forms. Citizens do not complete internal police counseling forms. Rather, completing counseling forms as part of the police disciplinary process falls under officers' official duties. Therefore, the plaintiff-officers' speech here 'owe[d] its existence to [their] public employee[] professional responsibilities.'

Because the plaintiff-officers were not speaking as citizens, if their supervisors thought the writings were "inflammatory or misguided, they had the authority to take proper corrective action." Though the First Amendment provides robust protection to statements pertaining to matters of public concern, it does not empower public employees to "constitutionalize the employee grievance" when they are acting in their official capacities.

[Id. at 244.]

Here, unlike in Dougherty, but like in Foraker, Santiago, and most especially, FOP, Howe's racial comments on the "Instructor Evaluation Form" are not protected free speech because he completed the form as part of his "official duties" and not as a citizen speaking on a matter of public concern. Certainly, "a 'practical' inquiry" into "whether the speech at issue is itself ordinarily within the scope of an employee's duties," shows that Howe's responses on the evaluation form, which he and other recruits were required to complete prior to graduating from the police training academy, "is employee speech and receives no first Amendment protection."³

As in FOP, "[c]itizens do not complete" police training academy instructor evaluation forms. Instead, Howe and his fellow trainees were required to fill out the forms as part of their "official duties" while at the academy. The evaluation forms are meant for trainees to provide feedback on the subject matter of their training courses and on the quality of the instruction they received. Thus, like in Santiago, Foraker, and FOP, and unlike in Dougherty, Howe "did not speak to the public, but directed [his] speech up the chain of command."

³ While the police academy is not Howe's employer, he was required to be at the academy as part of his employment.

Moreover, like in FOP, Howe's speech on the form 'owe[d] its existence to [his] public employee[] professional responsibilities" and, as the Court explained in Garcetti, "[r]estricting speech that owes its existence to a public employee's professional responsibilities does not infringe any liberties the employee might have enjoyed as a private citizen[;] [i]t simply reflects the exercise of employer control over what the employer itself has commissioned or created." Thus, because Howe spoke as part of his official duties and not as a citizen, I **CONCLUDE** that he is not entitled to free speech protection and if the Department "thought the writings were 'inflammatory or misguided, they had the authority to take proper corrective action.'"⁴ Therefore, as instructed by the Commission on the remand, a reexamination of my initial determinations is required and appropriate.

LEGAL ANALYSIS AND CONCLUSION

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.

⁴ There is no need to reach the "second inquiry" under Garcetti because the answer to the "first inquiry" is "no," Howe did not speak as a citizen.

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

The racial connotations used by Howe on his Academy Instructor Evaluation raised concerns among the Director of the Academy and the administration at the Sheriff's Department. To address these concerns, Warden Lombardo opened a general investigation and interviewed Howe in the presence of Captain Magill. During that meeting on April 29, 2024, Warden Lombardo advised Howe about workplace speech and his sworn obligation to abide by SOP 213. (C-8.) The policy under SOP 213 is to afford all members/employees of the Sheriff's Office an "absolute right to work in an environment free from all forms of harassment. Ibid. To that end, the administration "shall take immediate action to prevent such behavior." Section 4.2 of SOP 213 prohibits members from making "offensive or derogatory comments, either directly or indirectly, to another person or otherwise engage in any other prohibited activity listed in this written directive based on race, color, age, sex, religion, national origin, disability or protected activity." The Sheriff's Department considers such harassment as misconduct subject to discipline. (C-8, 4.2.2.)

In response to Warden Lombardo's directive, Howe wrote a special report memorializing the meeting. Although Howe acknowledged that he had been given copies of SOP 213, and page from the Rules and Regulations which highlighted 4.10.2, Impartial Attitude, 4.10.6 Subversive Organizations, and 4.10.7 Affiliation with Radical Groups, he did not address anything about workplace speech in his special report. He reiterated his own concerns about what he believed was an anti-white discriminatory culture.

“Insubordination” has been defined as a failure to obey a lawful order. In re Williams, 443 N.J. Super. 532, 403 (App. Div. 2016). 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.) “An order shall be delivered in clear understandable language.” (C-9, 4.1.14.) When Warden Lombardo warned Howe that he could not express his beliefs about anti-white culture in the workplace, this was a lawful order that was not protected by the First Amendment. It was clear from Howe’s testimony and his special report that he understood that the purpose of the meeting was to discuss what he had written on the Academy Instructor Evaluation. The only plausible reason for the meeting was Warden Lombardo’s warning to Howe to cease all further such discussions. Thus, I **CONCLUDE** that Warden Lombardo issued a clear order to Howe not to engage in any further discussions about his views as written on the Academy Instructor Evaluation.

The next day, on April 30, 2024, when Officers Wainwright and Womack engaged Howe in a discussion about his beliefs and opinions on race as expressed in his special report and Academy Instructor Evaluation, Howe’s ready response was insubordinate. Accordingly, I **CONCLUDE** that respondent has proven the charge of insubordination and that charge is **AFFIRMED**.

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. Although there was no indication of any mistreatment, malfeasance, or failure to attend to the needs of any inmate, Howe was a probationary employee whose expressed views and beliefs in the workplace caused legitimate concern to the Sheriff’s Department about harassment.

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. This was a conversation that was prompted by Howe. It was listed generally under the incidents giving rise to the charges. (J-2.) When I observed Howe while testifying, Howe would attempt to incorporate many different topics which he believed supported his view of history and race relations, even when unresponsive to a direct question. In assessing the credibility of Howe’s testimony, it was clear that Howe was motivated to advocate for his beliefs when responding to questions.

Howe’s failure to recognize appropriate workplace speech 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. For the foregoing reasons, I **CONCLUDE**

that the respondent has 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 after his meeting with Warden Lombardo about the content of his report and “his thoughts and beliefs about certain inmates of protected classes.” (J-2.) While Howe did not start or seek out this conversation, he clearly discussed his beliefs about race in the workplace after Warden Lombardo had warned him about appropriate workplace speech. Thus, Howe neglected to act as required by his job title. Accordingly, I **CONCLUDE** that respondent has 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, responded charged Howe with violations of the Rules and Regulations, specifically, SOP 213, 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 **AFFIRMED**.

PENALTY

The next question is the appropriate level of discipline. A system of progressive discipline has evolved in New Jersey to serve the goals of providing employees with job security and protecting them from arbitrary employment decisions. Progressive discipline is considered when determining the reasonableness of the penalty. West New York v. Bock, 38 N.J. 500 (1962). The concept of progressive discipline is related to an employee's past record. The use of progressive discipline benefits employees and is strongly encouraged. Here, Howe was a probationary employee, who had just returned from the Academy. From his memorializing statement, it was evident that Howe expressed no understanding that his workplace speech was inappropriate and must cease. While Howe did not initiate the conversation with Wainright and Womack, he did not shy away from further espousing his views and beliefs. Clearly, Howe's meeting with Warden Lombardo had no effect on curbing Howe's speech in the workplace.

The law is also clear that a single incident can be egregious enough to warrant removal without reliance on progressive-discipline policies. Thus, progressive discipline has been bypassed when an employee engages in severe misconduct, especially when the employee's position involves public safety, and the misconduct causes risk of harm to persons or property. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980). Some offenses are so egregious in nature that dismissal is appropriate regardless of the employee's prior disciplinary history. In re Herrmann, 292 N.J. at 33-34; In re Carter, 191 N.J. at 486.

As a law enforcement corrections officer, appellant is held to a higher standard of conduct. He represents law and order to the citizenry and must present an image of

personal integrity and dependability. Moorestown Township v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). Here, just two days after returning from the Academy and while a probationary employee, Howe's speech and continuation of that speech caused the warden 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. It was also clear from the testimony of Undersheriff Maher that Howe's willingness to express his beliefs on the Academy Instructor Evaluation, the special report, and in conversations in the workplace reflected a bias that undermined the delivery of impartial service to the public. As a corrections officer, Howe is held to a higher level of accountability to promote and maintain public trust.

It is improbable that Howe failed to comprehend the purpose of his meeting with the warden. Howe is a probationary employee, who ignored the warden when he disregarded his warning about appropriate workplace speech. From his testimony, it was clear that Howe has deeply held beliefs about race. Because he is incapable of distinguishing appropriate workplace speech from inappropriate speech with racial connotations, progressive discipline would be ineffective. As such, his continuation as a corrections officer would undermine the integrity and impartial service expected by the Sheriff's Department. Therefore, I **CONCLUDE** that progressive discipline is not warranted, and removal is the appropriate penalty.

ORDER

I **ORDER** that the disciplinary action of the respondent, Cape May County Sheriff's Department, in removing appellant Joseph Howe from his position as a County Corrections Police Officer is **AFFIRMED**, and that the within appeal is hereby **DENIED**.

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

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



August 15, 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



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 2ND DAY OF JULY, 2025

Allison Chris Myers

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. CSR 02128-25

AGENCY DKT. NO. N/A

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

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

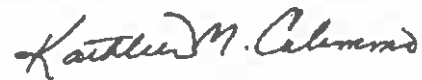
It is hereby **ORDERED** that the disciplinary action of the respondent, Cape May County Sheriff's Office, in removing appellant, Joseph Howe, from his position as a correction officer on July 17, 2024, is hereby **REVERSED**. The appellant's appeal is **GRANTED**.

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 Wornack
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