



are not transmitted by the record.” *See also, In re Taylor*, 158 *N.J.* 644 (1999) (quoting *State v. Locurto*, 157 *N.J.* 463, 474 (1999)). Additionally, such credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear. *Id.* at 659 (citing *Locurto, supra*). The Commission appropriately gives due deference to such determinations. However, in its *de novo* review of the record, the Commission has the authority to reverse or modify an ALJ’s decision if it is not supported by sufficient credible evidence or was otherwise arbitrary. *See N.J.S.A.* 52:14B-10(e); *Cavalieri u. Public Employees Retirement System*, 368 *N.J. Super.* 527 (App. Div. 2004). In this matter, the exceptions filed are not persuasive in demonstrating that the ALJ’s credibility determinations, or her findings and conclusions based on those determinations, were arbitrary, capricious or unreasonable. As such, the Commission has no reason to question those determinations, or the findings and conclusions made therefrom.

Since the removal has been reversed, the appellant is entitled to be reinstated. Normally, the appellant would also be entitled to mitigated back pay, benefits, and seniority pursuant to *N.J.A.C.* 4A:2-2.10 from the initial date of separation without pay until the date of actual reinstatement. However, there is information in the record indicating that the appellant was reinstated to pay status on May 2, 2023, pursuant to *N.J.S.A.* 40A:14-201. Assuming the accuracy of this information, the appellant, therefore, will have already received any pay that he would be entitled to from that date forward until his reinstatement, and, as he was in pay status, he should also receive any concomitant benefits and seniority for that timeframe. *See also, N.J.A.C.* 4A:2-2.10(d)5. For any period from the date of first separation that he was not in pay status, he is entitled to mitigated back pay, benefits, and seniority pursuant to *N.J.A.C.* 4A:2-2.10. Additionally, as he has prevailed in this matter, he is entitled to reasonable counsel fees per *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, in light of 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*, upon receipt of this decision, the appointing authority shall immediately reinstate the appellant.

### 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 appellant’s appeal.

The Commission orders that the appellant be immediately reinstated to his

permanent position and receive back pay, benefits, and seniority from the first date of separation for any period he was not in pay status pursuant to *N.J.S.A. 40A:14-201*. 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 for any period he was not in pay status 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 20<sup>TH</sup> DAY OF MARCH, 2024



Allison Chris Myers  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

Attachment





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

**INITIAL DECISION**

OAL DKT. NO. CSR 09765-22

AGENCY DKT. NO. N/A

**IN THE MATTER OF ADAM AUSTINO,  
CITY OF VINELAND.**

---

**Katherine Hartman, Esq., for appellant**

**William F. Cook, Esq., for respondent (Brown & Connery, LLP, attorneys)**

Record closed: December 21, 2023

Decided: February 5, 2024

**BEFORE CATHERINE A. TUOHY, ALJ:**

**STATEMENT OF THE CASE**

Appellant, Adam Austino, a Vineland City Police Captain, appeals his removal, effective November 15, 2021, pursuant to a Final Notice of Disciplinary Action (FNDA) dated October 21, 2022 (J-1).

The charges presented include:

Count 1: N.J.A.C. 4A:2-2.3(a)(12) Other sufficient cause for improper employment practices – retaliation and/or disparate treatment in violation of New Jersey and Federal employment laws as set forth in schedule A of the Final Notice of Disciplinary Action (FNDA), dated October 21, 2022;

Count II: N.J.A.C. 4A:2-2.3(a)(9) Discrimination that effects equal employment opportunity, as set forth in schedule A of the FNDA;

Count III: N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming a Public Employee as set forth in schedule A of the FNDA;

Count IV: N.J.A.C. Unbecoming Conduct – common law claim, as set forth in Schedule A of the FNDA.

The incidents giving rise to the charges and the dates on which they occurred, set forth in Schedule A of the FNDA, dated October 21, 2022, (J-1) are as follows:

1. On or about November 30, 2018, PBA Local 266, which represents members of the Vineland Police Department (VPD), provided the City of Vineland (“City” or “Vineland”) with the draft of a civil lawsuit that the PBA intended to file in New Jersey Superior Court on behalf of its members. (“Draft Complaint.”)
2. In response to the draft complaint, the City commissioned an outside employment investigation into these allegations.
3. As detailed in the extensive employment investigation, Adam Austino, through his actions or omissions, and through the use of his authority and power, retaliated against and/or disparately treated persons who complained of wrongdoing or who were perceived as associated with those who complained of wrongdoing. Austino also aided and abetted an environment whereby such intimidation and/or punishment would occur.
4. During the time frame of 2016-2017, Austino aided and abetted retaliation as to a VPD Internal Affairs (IA) Sergeant, Leonard Wolf, who was perceived as unsupportive of Beu, Finley, and Austino, including in their efforts to investigate then Chief Timothy Codispoti for VPD’s long-time maintenance of a bank account (known as the “Soda Fund”) which had contained proceeds from a soda machine. As to the Soda Fund matter, Wolf did not initiate an IA investigation, since: (1) he did not understand, in good faith, that Austino was requesting one; (2) Austino had decided that he (Austino) would conduct an investigation, even though Austino was not in IA; and (3) such an investigation should have properly been conducted by the prosecutor’s office. Wolf was later subjected to discipline without notice, and unfairly criticized in documented IA documentation. He was then removed from the IA unit.
5. In another example, Captain Austino issued an order on or about December 12, 2016, that caused the activation of the live stream audio feature of the DVMS Pro MVR system in the police vehicles. When activated, the live stream audio feature of the system transmitted all sounds from inside the police vehicle via live stream to police department computers equipped to monitor the sound inside the vehicle, even in the absence of triggering events. Austino issued this

order while admittedly knowing there had been numerous complaints and problems with the system in general and without detailed knowledge of how the system worked. Austino gave this order under circumstances where he knew, or should have known, that multiple officers had previously complained to Chief Codispoti about activation of the live stream audio feature of the system, in response to which Chief Codispoti ordered that the live stream audio feed be deactivated. Austino further knew or should have known that thereafter, there had been intermittent cases of the live stream audio feature being found active and being shut down upon discovery. Austino further knew or should have known that the officers had threatened to take legal action if the live stream audio feature continued to be activated from time to time. Without regard for any of these circumstances, Austino gave an order which he described as simply "make it work" regarding the MVR system, which required re-activation of the live stream audio, contrary to Chief Codispoti's prior order and with complete disregard for the expressed concerns by the officers in the department.

6. As another example, on March 2, 2016, an individual named B.B. was arrested following a motor vehicle stop by VPD officers on a drug-related offense. At the station house, B.B. was questioned by Officer Ryan Madden as to whether he was concealing drugs. In the course of that questioning, without any advance notice whatsoever to Madden, B.B. quickly dropped his pants and bent over, at which time Madden could observe a piece of clear plastic sticking out of B.B.'s buttocks in plain view. The station house commander, then-Lieutenant Pedro Casiano, being of the understanding that the drugs could be observed in plain view, conveyed to Madden that objects can be seized if they are in plain view. Casiano did **not** order a strip search. The drugs were subsequently obtained when B.B. agreed to voluntarily remove a clear plastic bag containing suspected crack cocaine and gave it to Officer Madden. In an IA investigation report completed by Captain Austino, Austino recommended charges to be lodged against the officer involved in the incident, including Casiano relating to his supervision, but provided no reference or discussion as to any alleged untruthfulness of Casiano. Disciplinary charges were subsequently issued, which Casiano vehemently disputed, as it was his good faith belief that the plain view exception applied. Nevertheless, in the interest of concluding the matter, Casiano agreed to serve a ten-day suspension as to his supervision of the incident. Yet with full awareness that Casiano was never charged with, nor ever found guilty of, the independent disciplinary offense of untruthfulness, and with further awareness that Casiano was advancing through the agency to the point of threatening their autonomy and control, Beu and Austino perpetuated the utterly baseless claim that Casiano "lied" in connection with the Beu matter, all to undermine, discredit, and defame him as he sought to advance through promotional processes, and to further send a clear message that others seeking to advance would be met with similar consequences and intimidation.
7. On June 10, 2017, Captain Austino, while working on a street assignment, ordered the arrest of a citizen, T.C., for disorderly conduct after T.C. directed foul language towards police as they were attempting to clear an area.

Reasonably perceiving that the order of arrest may have been misguided, or even unlawful, then-Sergeant Gregory Pacitto, who was present for the arrest, filed a "Critical Incident Sheet" outlining his concerns, prompting an IA investigation. Lieutenant Christopher Landi, who was also present for the arrest and viewed footage of the arrest afterwards, shared in Pacitto's concerns. Despite the good-faith concerns raised by Pacitto and Landi, Austino was promptly exonerated without any interview. Pacitto's complaint was then converted into an investigation against Pacitto and Landi for improperly questioning Austino's authority and fabricating their complaints. In so doing, Pacitto and Landi were marked as having an IA investigation on their respective records, with Landi receiving a sustained charge for performance of duty, again sending a message throughout the agency that any such questioning would be met with consequences.

8. The actions of Austino as identified above, as well as those actions of Austino as set forth in Mr. Gelfand's 2021 "REPORT OF INVESTIGATION IN THE MATTER OF VINELAND WORKPLACE HARASSMENT AND RETALIATION INVESTIGATION," demonstrate retaliation, disparate treatment, and/or aiding and abetting of same as to the PBA, those bringing good-faith concerns to the attention of management, and those perceived as associated with such complainants, thus warranting serious remedial action. Such conduct creates an intolerable and unsustainable risk of civil liability under anti-discrimination and anti-retaliation laws, policies, and procedures, to wit:
  - a. The New Jersey Conscientious Employee Protection Act ("CEPA"), N.J.S.A. 34:19-1 to 34:19-14;
  - b. The New Jersey Law Against Discrimination ("LAD"), N.J.S.A. 10:5-1 to 10:5-50;
  - c. The New Jersey Civil Rights Act ("NJCRA"), N.J.S.A. 10:6-1 to 10:6-2;
  - d. The New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 to 34:13A-64;
  - e. 42 U.S.C. Sec. 1983
  - f. City of Vineland Policy Nos. 1151 ("Whistleblower Act") and 1152 ("Employee Complaints"); and
  - g. Similar such laws, regulations, and policies as set forth in Mr. Gelfand's 2021 Report.

At issue is whether Austino is guilty of the specifications alleged, and if so, is removal the appropriate penalty.



## PROCEDURAL HISTORY

On November 15, 2021, respondent, City of Vineland, initially issued a Preliminary Notice of Disciplinary Action (PNDA) (J-3) setting forth the charges and specifications against Captain Austino, which PNDA was subsequently amended with an amended Schedule "A". (J-2.) Appellant requested a departmental hearing which was conducted on various dates in June and July 2022. On October 21, 2022, respondent issued a Final Notice of Disciplinary Action (FNDA) sustaining the charges in the amended preliminary notice and removing Captain Austino from employment, effective November 15, 2021. (J-1.) Appellant filed a direct filing removal appeal on November 2, 2022, with the Office of Administrative Law (OAL) where it was filed as a contested case pursuant to N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52: 14F-1 to -13. An order denying the consolidation of this appeal with those of Beu and Riordan was entered on January 11, 2023, by ALJ Calemmo.

A prehearing order was entered January 23, 2023. There were numerous telephone status conferences conducted.

There were fourteen days of hearing: March 6, 2023, March 7, 2023, March 9, 2023, March 23, 2023, April 17, 2023, April 19, 2023, April 20, 2023, May 17, 2023, May 18, 2023, May 24, 2023, May 30, 2023, July 5, 2023, July 10, 2023, and July 13, 2023.

On June 9, 2023, an Order was entered returning Captain Austino to pay status on May 2, 2023, pursuant to N.J.S.A. 40A:14-201(a). On June 9, 2023, an Order was entered denying Captain Austino's motion to dismiss at the close of respondent's case. On July 17, 2023, an Order was entered denying Vineland's motion for a stay of the salary payment order. On November 1, 2023, an Order was entered denying respondent's motion to reopen the record and to amend the FNDA.

## **FACTUAL DISCUSSION AND FINDINGS**

### **Testimony**

**Brian Armstrong** testified on behalf of the respondent. He has been employed by the VPD for fifteen years, most of which have been on patrol in the street crimes unit, and he is currently a lieutenant overseeing the crime scene unit and evidence unit.

The City of Vineland is seventy square miles and consists of a center city area as well as farm area. It is a large police department with 160 officers, of which forty are supervisors, and they have several part-time Class I and Class II officers as well as dispatchers.

In 2016 he was assigned to the street crimes unit for a few months and then sent out to patrol where he was a shift manager. The street crimes unit was a proactive unit designed to address quality-of-life issues and concentrated on high-crime areas to enforce the laws and stop the crimes in that area. In 2016 there were fifteen officers assigned to the street crimes unit. There were three units and three or four officers in each unit, including one sergeant per unit and supervised by one lieutenant.

The MVR (Motor Vehicle Recording) system was a mobile video recorder—one camera pointing forward and one pointing rear where the prisoner was seated, and an orange light would show if it was activated. Once the videos were recorded and the vehicles were back at the station, it would be uploaded to the server. There were certain triggering events that would start the recording, such as the vehicle exceeding sixty-five mph. There was a written policy in effect. (R-3.)

There came a time when he had concerns regarding livestream functionality with the MVR system. The livestream was an option. All of the supervisors had access to review the videos and the livestream and see the cars on the road. The livestream feature was a concern because the cameras could be used as a wiretap. He logged on to the system and he could hear audio coming from the car. He was in the actual police department building on a computer, and he could hear audio coming from inside a patrol

car, which was concerning to him. Chief Codispoti issued a standing order that there would not be a live audio feature functioning in the patrol vehicle and Chief Codispoti issued an order that it would be turned off. After the order was issued that the audio should be turned off, he logged on and was able to hear audio coming from the vehicle. He took certain steps because he felt it was a violation of the order and a wiretapping violation. This occurred in mid-December 2016. He went down to Sgt. Fulcher, who was in charge of computer operations, as he handled all electronic functions. Once the prosecutor's office had the case it was in their hands. Lt. Armstrong was not interviewed by the VPD.

There was a separate issue regarding live feed from the telephones in the sergeants' and lieutenants' offices. The one phone in the lieutenant's office was a recorded line. The same software that allowed for the recording could also be used to listen to what was going on in the room. He was very concerned about this because that is where supervisors would discuss various things. It was also a break room. Sometimes they had private conversations there.

Once he became aware of this issue, he informed his other partners that there was a live feed in there and he informed Detective O'Neill, who was in charge of their union. He did not trust their IA department. He was ordered by Finley to chronologically set out everything he knew regarding the issue. Finley was in charge of IA. He thought he should not be answering to Finley because he may have been involved in why the phones were on. Finley should not be investigating himself. He did not trust the IA department because they were not being fair, and they had vendettas against officers. The prosecutor's office had undertaken an investigation of the MVR issue. Lt. Armstrong had a meeting the next day with the city solicitor, Richard Tonetta, the public safety director Alicea, and several members of the internet services or computer operations department because Armstrong thought he may be retaliated against, so it was essentially a CEPA meeting. The phone call between Tonetta and Finley was on speaker phone and both were saying to each other they should not be interfering with an IA investigation. The outcome of the meeting was that Armstrong was directed by Tonetta not to answer Finley's questions. Following that meeting, things changed for him. Everything became by order when previously you were given an assignment and just did it. He was put into the street crimes unit at the

beginning of the next year and after a month or two, his unit was knocked down to two officers. Armstrong was going to be pulled out of the unit, but met with his lieutenant, expressing his concerns that he was a senior supervisor and had no discipline pending, and there was no reason to pull him out when the other supervisor wanted to come out. He ended up staying in the unit, but by October the street crimes unit was disbanded, and he got put back on shift. Once back on shift, they had to fill out daily logs with fifteen-minute intervals of what they were doing, and he felt they were being harassed.

This was Lt. Armstrong's third time testifying on this subject matter. He previously testified in the Beu and Riordan matters and was mailed the transcript by Mr. Cook, although he did not speak to Mr. Cook about it. A dispatcher advised him that the phones could be used to listen if a certain software setting was hit—it was not automatic. Armstrong did not go to IA to complain about the telephone. The telephone was removed the same day he learned it was recording. IA removed the phone the same day they learned it was recording. He has no knowledge that anyone in IA used the software to listen to what was going on in the office. He has no evidence that Captain Austino manipulated the setting to listen to what was going on in that office.

Sgt. Fulcher's responsibility was to deal with the computers and any problems related to them. In December 2016 Armstrong became aware of the livestream in the patrol car. He was aware that in the days and weeks prior thereto, the City had been having difficulty with the audio in the patrol cars. The audio was not working when prisoners were being transported, and it was important that the audio be working for prisoner transport as sometimes they admit what they did; confessions can be captured on the car audio, and sometimes the prisoner commits further crimes by saying things or harassing officers, which may be justification for other charges. There had been a lot of discussion in the department about the malfunction of the audio during prisoner transports. Things are recorded and downloaded when close to the station and can be used as evidence in a case and to assist when preparing reports. Someone trying to prepare a report using the video with the microphone not working is going to have a problem writing their report. If there was a problem and/or a malfunction with the software, Sgt. Fulcher would be the one to address the problem. Captain Austino was the patrol captain at the time and was aware of the problems with the MVR system and the lack of

microphones. Captain Austino would have told Sgt. Fulcher to fix the problem with the software.

In 2016 Armstrong was a sergeant, having been promoted in March 2015.

The four triggering events when the MVR was supposed to go on were traveling over sixty-five mph, a manual manipulation with the officer turning it on, a collision, and activation of the lights. The MVR is supposed to go on, and there is supposed to be audio and video, and the orange light on the monitor in the vehicle shows it is on and recording. There is no light that goes on when there is a livestream audio from the vehicle.

There was a standing order by Chief Codispoti that the livestream function be turned off. He does not know if the order was in writing. He does not know when the order was issued, but it was well-known the audio was not to be on. The standing order was never addressed at roll call. Power DMS is their computer software with all of the department's documents. They should log on before each shift, so they know of the policy, review the policy, and acknowledge the policy.

He made himself available to the prosecutor's office regarding his knowledge of the livestream audio in the VPD. He was not interviewed by the IA unit. The Cumberland County Prosecutor's Office conducted an investigation and found no criminal conduct. If he had given all the knowledge he had when interviewed by the County, there would be no additional information to be gleaned from an IA interview of him.

In December 2016, Matthew Finley was in charge of IA. Capt. Austino was not in IA at that time.

Prior to December 2016, he had been disciplined by IA but had no major discipline—no suspension, demotions, or removal. He got some performance evaluations and was exonerated.

He was instructed that he did not have to answer Finley's questions by Tonetta. He has no knowledge if Finley had anything to do with manipulating the phone lines, but he made the decision that IA would not be fair.

The police department is a quasi-military organization with a chain of command requiring you go to the supervisor immediately ahead of you if you have an issue. Standard operating procedures, orders, policy and all of those things are on power DMS and are required to be reviewed and acknowledged.

After he reported the livestream issue, he was given orders. However, receiving orders from a superior is not retaliation. The log created was for everyone to fill out, it was a patrol division policy and not just directed at him.

Management decided to disband the street crimes unit and that made him unhappy. The whole unit was disbanded, and it was not designed to punish him personally.

Armstrong was never in IA. Lt. Finley holds grudges and things changed after Armstrong reported the problem with the wiretapping issue. Verbal orders are not stored in power DMS, but they all still have to comply with them. Armstrong was never able to rule out Finley or Austino's involvement with the livestream in the patrol car. Lt. Finley and Sgt. Fulcher came in to remove the phone and the box and took it out. He saw them remove the phone the same day after he raised the issue. It was concerning because they should not have been part of the investigation.

Four days after the issue with the MVR and with the phones in the sergeant/lieutenant's office, Armstrong was leaving a morning briefing meeting and was flagged down by a dispatcher, Jenna Korman. She told him that she could hear everything going on in the room. He did not report this to IA because the prosecutor's office was already investigating the MVR issue in the cars and would be considering the phone issue as well.

Lt. Armstrong did no investigation as to whether Austino did anything wrong as he had no investigatory authority. The policy changes regarding orders and keeping a log that Armstrong complained about were more formal approaches to policing. Lt. Armstrong does not like Captain Austino's management style.

Armstrong is currently up for promotion. If Capt. Austino came back, he may not be promoted. However, when everything happened, he was a Sergeant and not up for promotion. He has not been promised anything for testifying.

**Scott O'Neill** testified on behalf of the respondent. He is currently a Detective Sgt. and has been employed by the VPD since January 2004. He has been a patrolman, detective, sergeant, and detective sergeant. In December 2016 he was a detective. He became aware of an issue regarding the telephones in December 2016 from Sgt. Armstrong. He then went down to dispatch located in the basement of the VPD and they told him what was going on. The dispatchers pulled up the program and clicked it on and he was able to hear what was going on in the detective/lieutenant's office. It was a concern because it was a huge privacy issue. He was also told it was on the IA computer.

He called the prosecutor's office to report it because he did not know who was listening in and he did not know who made it work that way. He called Sgt. Ron Henry from the prosecutor's office, Professional Standards Unit and told him what he saw, and he told him to report it to IA., so he immediately went to IA and reported it to Lt. Matthew Finley was in charge of IA. He was not interviewed by the prosecutors' office or Vineland IA. He would have been the complainant, and he has never seen an investigation where the complainant was not interviewed. Lt. Finley was upset that he went to the prosecutor's office. Armstrong called Eddie Santiago the dispatcher to come up and show Lt. Finley how he clicked on a button to turn on the volume on the internal affairs' computer and could hear everything going on in the lieutenant's office. Lt. Finley turned red and said he would rip out the phone. Lt. Finley and Sgt. Fulcher went into the sergeants/lieutenants' office and O'Neill could hear them go into the office and rip the phone out because he stayed in the IA office. Finley came back in with the phone in his hand, but O'Neill told him he could still hear what was going on in the lieutenant's office. Lt. Finley told detective O'Neill that he would take care of it, and he could go back to work.

He did not know why they would do this without the prosecutor's office being there. Lt. Finley sent an email to O'Neill asking him who he spoke to. This was after he took the phone out. O'Neill felt very uncomfortable. He knew the mechanism worked and that they removed the telephone without the prosecutor's involvement. O'Neill called over to the City and spoke to solicitor Tonetta. He and Armstrong met at city hall with Tonetta and director Edwin Alicea. During the meeting, Finley called on a conference call and was yelling that they were over there. Tonetta told Finley to wait for the prosecutor's office to investigate it and not have a CEPA claim. Tonetta told O'Neill not to respond to Finley until O'Neill talked to the prosecutor's office. This all happened at the end of December 2016 and O'Neill was promoted in January 2017. He was in line for promotion as he was number one on the test. He got moved to patrol and was in that office for the next year and a half, not knowing if you could hear anything on the phones in the office and he never felt comfortable because he never knew if the issue was fixed. He was never interviewed by anyone.

Austino was a captain at the time and not in IA. O'Neill had no evidence to connect what happened with this phone to Austino. O'Neill called the prosecutor's office and spoke to Ron Henry, who said to report it to IA. Henry said that the prosecutor's office was going to investigate it, but that he still had to report it to IA. Henry said he was going to call Finley and O'Neill went down to see Finley. Finley looked upset. O'Neill had no knowledge or evidence that Finley knew about this problem in advance. O'Neill's complaint was that you could hear peoples' conversations from two different computers. Finley was upset about it and he and Fulcher, the IT sergeant, went to the office to rip out the phone. When Finley came back with the phone in his hand, O'Neill told him that he could still hear him and Fulcher talking in the office. Finley said he would take care of it. O'Neill never asked Finley if he took care of it because it was not his job to question IA. He did not ask Sgt. Fulcher if he fixed the problem because that would be interfering with an IA investigation. O'Neill was concerned about privacy and even with them removing the phone you could still hear what was going on. There were four phones in the room. Ultimately it did not solve the problem. Finley sent him an email requesting information as to who he spoke to and who had knowledge of the facts. He did not respond as he was uncomfortable and was waiting for the prosecutor's office to interview him. Once the prosecutor's office starts an investigation into criminality, that puts a hold on an IA



investigation. O'Neill contacted someone in city hall instead of contacting the prosecutor's office. This all happened on the same day. O'Neill wanted to make sure an outside office investigated. Finley called Tonetta and asked him why he was interfering with an IA investigation. The city said he may have a CEPA complaint for retaliation from reporting an illegal act. Finley yelled at him for reporting it. His first words were "I can't believe you called the prosecutor's office." After the meeting, he saw Finley in the hallway and Finley said he was sorry about the email, he was not going after him, and that he was trying to get Armstrong. O'Neill felt a criminal act had taken place and was trying to report it. He has never been yelled at for reporting an incident. Finley sending him the email requesting information he felt was retaliation. Finley said he was trying to get Armstrong in trouble, not O'Neill. O'Neill was promoted in January 2017 to sergeant. Prior to that he was a detective. Following his promotion to sergeant he was moved to a patrol sergeant's position, which is common after a promotion, and he did not claim that was retaliation.

O'Neill had zero contact with Captain Austino on this issue with the telephones.

**Gregory Pacitto** testified on behalf of the respondent. He is a captain in the VPD. He was hired in 2006 and started his career on patrol until 2010 or 2011, when he was moved into the detective bureau, major crimes. He was promoted to sergeant in 2017 and worked on patrol until he was transferred to the criminal division, detective bureau and in 2020 became a lieutenant on patrol and within a year became lieutenant of operations. In 2023 he was promoted to captain where he oversees operations and training. He has been involved in the union since 2010 and in 2011 became vice president, then president, and in 2017 became vice president of the supervisors' union. In 2016 he was president for the officer's union and then when he was promoted, he became vice president for the supervisors' union.

As president of the union, he oversaw collective bargaining concerns, grievances, contractual negotiations, as well as developing relationships with both the city and police administration.

In December 2016 he became aware of an issue with the livestream feature of the MVR system. He was contacted by a number of supervisors, including Adam Shaw and Brian Armstrong. The year before he had gone to Chief Codispoti with a complaint by the traffic unit that the MVRs in the cars were not working properly and were continuously livestreaming conversations from the car. The officers did not like this because they were having private conversations, and they did not like the thought of someone being able to listen to their conversations without their knowledge. Pacitto had gone to Chief Codispoti at that time and the Chief agreed that was not how the system was supposed to work, and he could understand why the officers were uncomfortable. Codispoti ordered Sgt. Fulcher to stop the livestreaming until the system worked properly.

After Pacitto had gotten a call from Shaw saying the livestream was back on, he again went to Chief Codispoti's office with Dave Cavagnaro, who was Vice President of the union. Before he went to see the Chief, Pacitto, who was not a supervisor at the time and did not have access to the system, was shown by Sgt. Shaw, who brought him into the lieutenant's office and showed him on the computer, that Shaw could livestream into a police vehicle without the officer having the MVR system on or his body camera on and could hear what was being said in the patrol car. The Chief asked how he knew it was back on and who ordered it back on and Pacitto said Shaw and Armstrong said they got the information from Sgt. Fulcher that Captain Austino ordered the livestream back on. The Chief then called Sgt. Fulcher on the phone and asked who ordered the livestream on. Pacitto could not hear what Fulcher said, but the Chief said to turn it off. Pacitto was surprised by this because in 2015, a year before, he had conversations with Chief Codispoti that this was a problem and he ordered it shut down. It was a concern of his because the prior chief agreed it did not promote a good work environment. As of December 2016, he had believed the issue was resolved because of Codispoti's order. Pacitto was not aware of an issue regarding prisoner transport and that they had video but not audio. Pacitto had no conversations with Austino regarding the use of the MVR. There was a concern regarding wiretapping and as president of the union, Pacitto contacted a couple of attorneys who advised to make sure it would get investigated properly.

In December 2016 it was also brought to Pacitto's attention, as the union president, that there was also an issue with the phones in the sergeant/ lieutenant's office.

Sgt. O'Neill contacted him that telephones were livestreaming audio whether you were using the phone or not. This was an invasion of privacy and wiretapping concern similar to the MVR concern, and in such a short time frame, so the union members were alarmed. Pacitto contacted the prosecutor's office because he believed it may be a crime and they were looking into it. Usually, when the prosecutor's office gets a referral from the police department for something they think is criminal, the prosecutor's office will review it and if there is enough to proceed with a criminal prosecution they will. Most of the time, the prosecutor will say that even though there is probable cause, they do not believe they will be able to prove it beyond a reasonable doubt and then they kick it back to the police department for an administrative review. Pacitto believed the VPD IA should not have been involved in the investigation since the software was located in dispatch and in the internal affairs office which was then commanded by Captain Finley. The union was not sure who was listening. Sgt. O'Neill and Armstrong advised Pacitto that Captain Finley was upset for them reporting it and not going to him first. O'Neill, while in the IA office at Finley's desk, was able to hear livestream from the sergeant/lieutenant's office and when Finley heard it, he ran to the office and ripped it out of the wall. This was a concern because this was not a normal reaction. If you were not involved and knew nothing about it you would want answers and make sure it is investigated, especially since it was on his computer. There were multiple phones in the department that had recording software. The phone in the sergeant/lieutenant's office was different and had a weird-looking box attached to it by the phone jack. Pacitto was concerned because he thought it was a bridging device to assist with tapping or bugging the phone.

There was a prosecutor's office investigation regarding the MVR and Pacitto was interviewed by Ron Henry. He was not interviewed by VPD IA when the case was remanded and Pacitto was concerned because he believed all persons with knowledge of the complaint should have been interviewed if they were doing a thorough investigation. He believes the prosecutor's office was concerned with the MVR and does not recall if they did any investigation regarding the phones.

There was a collective bargaining agreement between the City of Vineland and the PBA which outlined the grievance procedure. As PBA president, Pacitto was responsible for handling grievances. He filed a grievance for violation of maintenance of standards Article 4, Police Bill of Rights Article 28 and N.J.S.A. 2A:156A-3 which is the wiretap statute, in connection with the MVR issue. (R-5.) At the time he wrote the grievance, it was being investigated by the prosecutor's office. Pacitto received a response to the grievance on January 4, 2017, from Chief Rudy Beu who had been sworn in as chief in January 2017. (R-6.) He confirmed that the livestreaming was stopped, but Pacitto said it did not give them answers or address the investigation regarding why it was being done, if somebody was monitoring them, and if so what safeguards were in place to prevent it from happening again.

Pacitto said he later learned from somewhere that the reason Austino gave the order to reactivate the MVR system was for concerns regarding prisoner transports and the need for audio.

The prosecutor's office investigation of the wiretap determined it was not criminal and kicked it back to the VPD. Pacitto was never advised as to the status of the administrative investigation once it was returned from the prosecutor's office, even though he asked during meetings with the administration. He had conversations with Deputy Chief and then Chief Casiano regarding the status of the administrative investigation three or four times over three months and Casiano said he would find out and get back to him and he never did so Pacitto felt that he was not being honest with him. Austino was not in those meetings.

Pacitto was familiar with the June 10, 2017, incident regarding the arrest of T.C. He was working midnight as a sergeant on the shift having just been promoted that week to sergeant. In addition to supervising his officers, he was to review reports, complaints, and body cameras if necessary. The purpose of reviewing the reports was to make sure there were no policy violations, no grammatical issues, no one's rights were violated, and that there was probable cause for the arrest. He was reading a narrative report and complaint by Officer Mike Dennis concerning the arrest of T.C. for disorderly conduct for cursing at the cops. Pacitto did not see the probable cause for the arrest and went to

Officer Dennis and said that this was no good. Officer Dennis told Pacitto that Captain Austino said it was. Pacitto said there is no way Captain Austino would say this is a good arrest as he teaches search and seizure. Pacitto was not present for this arrest.

According to Pacitto, in order to have a disorderly conduct offense, there would have to be some form of a breach of the peace with civilians nearby or a quality-of-life-type issue where they are acting up, waking people up in the middle of the night, or they are acting violent and screaming or threatening people. Pacitto rejected the report and Mike Dennis did not change the facts in his report and said that was the way it happened. Pacitto instructed Officer Dennis that he should put in his report that if Captain Austino told him to make the arrest, then he should put that in his report. Making sure the reports were as complete as possible was a huge concern. Earlier in the year, Pacitto represented a number of officers and supervisors for an unlawful strip search, and during that time one of the supervisors who reviewed the report was being disciplined for not noticing there was a possible civil rights violation in the report, and that he never should have approved it. Pacitto thought that this was very excessive and had a conversation with Chief Beu about the issue of disciplining supervisors reviewing reports. Chief Beu indicated that the supervisor was an experienced officer, and this should have been a red flag for him, and he should have noticed it. This was what was on Pacitto's mind and why he was not going to approve Officer Dennis' report. He was going to prepare a Critical Incident Report to have IA review it.

Pacitto looked at the body camera of Officer Santiago, who was one of the officers present to best show the arrest. Sgt. Landi was also in the office when Pacitto reviewed the video from Officer Santiago's body worn camera.

The VPD uses a computer-based system 'Pro Phoenix' to prepare and review reports. The system allows you to edit reports, reject a report, make modifications and comments, approve the report or put it on hold. Pacitto used this system in reviewing the T.C. report prepared by Officer Dennis. The printout of the report status for the T.C. case, case number 17- 35754 (R-113) indicates that on June 10, 2017, at 11:49 p.m. Mike Dennis was assigned the case and on June 11, 2017, he submitted the report at 4:00 a.m. The report indicates that on June 11, 2017, at 8:47 p.m. Pacitto rejected it indicating

"2017, not approve the complaint. I advise you based on what you told me I believe the arrest may have been proper, but the charge was not appropriate based on the facts that was given. "You then informed me Captain Austino who was on scene approved the charge for disorderly conduct. It was then I told you Captain Austino made that call. Do what he told you to do." (R-113.)

On July 6, 2017, Lt. Triantos, who was Pacitto's supervisor, also rejected the report. He wrote in the comments: "There needs to be more detail regarding T.C. and his arrest for disorderly conduct. You state he was advised by officers on the scene several times that he was free to go. "Was he yelling and screaming in public? Was he stating that he would not leave? I know Captain Austino advised you to place him under arrest for disorderly conduct. You need to be more specific and describe his actions up to that point." (R-113.) This report has still not been approved by the VPD which is unusual.

Pacitto looked at the video from the body camera of Officer Santiago, who was one of the officers present and had the best angle to show the arrest. Sgt. Landi was also in the office when Pacitto reviewed the video from Officer Santiago's body-worn camera. He reviewed the video to check for accuracy and to see if Officer Dennis missed something.

Captain Pacitto was shown R-7 for identification, which was the body camera footage from Officer Santiago's camera. R-7 was played and shows T.C. at 4:10 in the video. Officer Selby is asking him questions. This was not a car stop. There is no obligation for an individual to provide his name and date of birth to the police. Captain Austino is seen over to the side in the video. At 4:39 the video is stopped. It is not a crime to curse at police officers in the State of New Jersey. At 5:32 the video stopped. Officer Selby had asked "Is he an accused?" The purpose of him asking that question is to determine if he is involved as a suspect and if he is that that can detain him longer for an investigative detention. At 5:45 the video shows Josh Sheppard, Captain Austino, Selby and T.C. At this point in the video there is no basis to arrest T.C. At 6:11 Officer Mike Dennis is seen walking up in the video. At 6:23 Officer Dennis said he was not involved. If not involved he was free to go as he is not an accused. At 6:30 telling him to

have a good day and he is free to go and Austino waives him along. At 6:31 video continues and stopped at 6:47. Pacitto stated that nothing he viewed justified an arrest for disorderly conduct. Capt. Austino is heard to say, "He was begging for it." This is not a basis to arrest someone. The video is played again and stopped at 6:55. Dennis' complaint said T.C. was refusing to leave, but T.C. did not refuse to leave, he was walking away when he was arrested. He was not even ordered to leave; he was told he could go. At the time he was told he was under arrest; he was walking away cursing at the police. The video continued at 6:55 and at 7:00 Austino says "what we wanted you to do was walk away." At 10:00 on the video, T.C. is in the vehicle.

Pacitto also reviewed the body camera footage from Sergeant Landi (R-20). 42 seconds into the video, Landi is shown walking in while T.C. is getting arrested. At 2:07 on the video Captain Austino is heard to say that T.C. 'squared up on him', which means taking a fighting stance. Pacitto did not see that anywhere in the video. Following his review of the video, he wrote up a Critical Incident Report, which is a referral to Internal Affairs and what they are instructed to do if they believe there was a violation or crime that should be investigated further. (R-8.) He signed it. (R-8, page 3). He was working as a patrol sergeant but did not respond. After watching what occurred he spoke with Sgt. Landi and Sgt. Shaw who agreed with him that the charge and arrest did not coincide with what happened. (R-8, page 2.) Pacitto also filled out a preservation of evidence form to preserve the video footage. He was never interviewed regarding this report, which is concerning since he was the author of the report and assumed a thorough investigation would include interviewing him. Pacitto gave his schedule to Riordan in IA in case he wanted to interview him, but Riordan said that 'Adam' cleared it up with some case law. At one-point Pacitto reviewed the case that Riordan had given him, but it did not fit the circumstances and Pacitto still did not believe the arrest was lawful.

There was handwriting on the first page of his critical incident sheet. (R-8.) He does not know whose it is. It said: "Austino = exonerated. Pacitto = exonerated. Landi = sustained, council." Pacitto was never informed that he was a target of an investigation and did not know what he was being investigated for or what he was exonerated from. He only saw the handwriting on the document years later during trial preparation for the

Beu matter. He later learned that T.C. plead guilty but that does not legitimize the arrest. As the complainant, he never received notice of the outcome of his critical incident report.

After the T.C. incident, he continued his involvement with the PBA. He is familiar with the drafting of a civil complaint by the PBA. The draft complaint was a legal strategy by their attorney, David Long, to have the city hire an independent investigator to address their concerns and conduct an investigation. They felt the grievance procedure would not cause an investigation to be done and that is what they wanted. Some of the items in the complaint he had knowledge of, and other information was provided to him by union members. David Cavagnaro was the union president in November 2018 when the final draft was sent to the city, so he would have reviewed it. The draft civil complaint was provided to city management in November 2018. An outside city investigation was done by Mr. Gelfand. After the draft complaint was submitted to the city there was a PBA meeting where the draft complaint was discussed. Tom Riordan from IA who was at the meeting said he received a copy of the complaint, and it was in his back pocket. Riordan said to the membership at the meeting that there was a consequence to every action. Pacitto asked the audience if that was a threat. Riordan said that no, it was not a threat, but Pacitto took it as a threat.

Austino never came up to him to discuss anything about what he had done or say the CI report was frivolous and contrived.

In 2016 Pacitto was a patrol officer and detective in major crimes. In 2016 he was promoted to sergeant, then lieutenant and then captain. He took Austino's captain spot. In 2016 Anthony Fanucci ran for mayor, and PBA 266 of which Pacitto was president, donated \$2,500 to his campaign. In January 2017 Fanucci became mayor. Fanucci is Pacitto's best friend and since he has become mayor, Pacitto has gone up three ranks. He had been a patrol officer for eleven years and then detective with the same pay, but as detective you get a take-home car and a phone.

Pacitto was a sergeant for one week when he reviewed the T.C. matter. Austino was the search and seizure training officer for the department and had trained Pacitto for



many years. Pacitto saw no justification to arrest T.C. and he believes Austino wrongfully arrested T.C. Eventually they learned that T.C. had an outstanding warrant.

Pacitto indicated in his comments in R-113, that the arrest may have been proper for obstruction. However, he said from what he saw, it would not have been proper to charge T.C. with obstruction. He also did not believe it would have been proper to charge T.C. with hindering, even though T.C. gave a fake name to a police officer considering all of the factors.

Although false arrests can be a crime, Pacitto did not call the prosecutor to advise them that he believed Austino may have committed a crime by falsely arresting an individual. When he learned T.C. was illegally charged, he did not reach out to the prosecutor or the public defender, municipal judge, or the city solicitor to say it was an illegal charge. He has gone to the prosecutor on other issues, but on the advice of counsel.

He is best friends with the mayor, and they have lunch together once a month, sometimes in city hall. They go out to dinner. Their wives are friends, and they go on vacation together. Pacitto did not discuss the T.C. incident with the mayor. The mayor is the appointing authority in Vineland and the one required to make promotions.

Looking at Santiago's body camera video, Selby repeatedly asked T.C. for his ID. At one point in the video, Selby told T.C. he had to give him his information and that was an order. That was a violation of the stop and identify rule, yet Pacitto did not mention this in his report or file a critical incident report on Selby. In the video, T.C. appears to be intoxicated, yet Pacitto does not mention that in his report. The night in question was "Cruise Night" which is a car show and car parade with about 6,000 people attending the event. There are a lot of people on the street and cars passing by. This occurs in public which is one of the elements of disorderly conduct. People have to be around and be bothered by the conduct. When Pacitto was told by Dennis that Austino ordered the arrest, he was surprised since Austino was the search and seizure expert, it did not occur to him to pick up the phone and ask Austino to explain to him the justification for the charge, especially since Pacitto was a first-week sergeant and Austino an experienced

captain. In R-113, Pacitto indicated that the checklist prepared by Dennis does not appear to be accurate. He does not remember what was inaccurate about it, but he did not file a critical incident report.

Prior to the T.C. incident, Pacitto, as president of the union, had an issue with how Austino performed his job duties, and he did not agree with some of Austino's contractual interpretations. Pacitto had a meeting with Beu and complained about Austino and told him that the union did not like the way he performed his job duties. Pacitto did not tell Beu that when he becomes chief to get Austino in line; Beu told Pacitto he would get Austino in line.

Captain Austino was a member of the PBA and left the PBA after the T.C. incident. Pacitto did not draft a CI report as to Landi who on video is telling a bystander that T.C. was looking to get arrested after they told him to get out of there approximately twenty times. Although this was not true, they did not tell him to leave twenty times, Pacitto said it was a de-escalation technique and was appropriate.

This is the third time Pacitto has testified. He is aware that Austino received a copy of the CI report the day after Pacitto submitted it and is not suggesting that Austino received a copy in some nefarious way. Austino does not control the ProPhoenix system and had nothing to do with the report not being released.

Pacitto is aware that the Cumberland County Prosecutor's office found that in the B.B. matter probable cause existed that an illegal strip search occurred but did not know if they could prove it beyond a reasonable doubt and remanded the case back to the department for an administrative review.

Pacitto does not know if Austino had anything to do with the telephone issue. He was at a meeting with Tonetta, O'Neill, Armstrong, Alicea and the head of IT, who said it was not a mistake and that somebody had to do something intentionally for the phone to be picking up conversations.

The grievance dated December 14, 2016, stated that the violations were continuing. (R-5). Pacitto said he put one in continuously just in case it was still going on and they did not know about it, because they were already told it was stopped. When Pacitto filed this grievance, he was aware that the Cumberland County Prosecutor's office was already conducting a criminal investigation into the issue, but he only had a certain amount of days to file a grievance per their contract, so he filed the grievance, whether it was proper or not with the prosecutor's office already investigating the matter.

The MVRs were introduced in 2015. The traffic unit complained about the inconvenience of the MVRs being installed. Body-worn cameras were being introduced as well but more slowly. The state PBA voiced concerns of body-worn cameras being introduced throughout the state as did their local. Pacitto voiced his concerns to the Chief. He did not know the percentage of officers who had body-worn cameras (BWC) by December 2016 but believed patrol officers did. He was not involved in the budgeting for the BWC or in the rollout of the BWC. He remembers the traffic unit complaining about the MVRs continually going on and the Chief ordered it turned off until it worked properly. This problem with the software not working properly was not a grievance issue and probably would be handled by Fulcher and not the union.

Pacitto had heard that the chief was complaining to Austino about the cameras not working and that was the reason that Austino told Fulcher to make them work. In Pacitto's opinion, Austino telling Fulcher to make the cameras work could have been Austino ordering Fulcher to go livestream if that was the only way they would work. However, he has no idea if Fulcher told Austino that was the only option. Pacitto believes there could have been a livestream after December 14, 2016. They were turned off and at some point, Fulcher turned them back on because of the problem they were having with the microphones. Then they were turned off, but they were not all turned off and those in five or six cars out of thirty-five to forty were still on.

There was no retaliation against any union members for voicing concerns over the livestream in the cars. The grievance seems to have conflated the phone issue with the MVR issue. The retaliation raised in the grievance is the email that Finley sent to O'Neill and Armstrong.

Pacitto read Mr. Gelfand's report and received a copy of it shortly after the final copy came out. He asked Tonetta for a copy. Pacitto had been asking the mayor, the director, the solicitor, Mike Benson, and the BA nonstop as to what was the status of the investigation. He was vice president of the supervisor's union at the time and the president was Scarpa, who also received a copy. He knows the PBA got a copy but he does not know when. He commented to Mr. Tonetta that he was pleased with the report. The union claimed that despite Austino being a member of the PBA, he was discriminating against members of the PBA for their union activity.

Pacitto never found any evidence of any kind that any member of the Vineland City Police Department was spying on officers using the MVR.

The captain of the patrol division told the IT person about the software that was malfunctioning to just make it work. Pacitto's understanding is that was an order to livestream. Pacitto was told by Fulcher and Armstrong that Fulcher said Austino said make it work. Pacitto translated that into Austino ordering the livestream to go into effect on the MVRs. When Pacitto went to Codispoti with Cavagnaro to say that the livestream was on in the cars and they were unhappy about it, the Chief immediately rectified it, picked up the phone, called down to Fulcher and gave the order to turn it off immediately. To Pacitto's knowledge, Austino was not disciplined for saying to Fulcher make the camera work. He does not believe Austino should have been disciplined for saying those exact words, but if he knew that the livestream would be activated yes, and if did not, no.

Pacitto did not trust all of the VPD IA unit in 2016. He did not trust Finley, Riordan, Wolf, and Derego. He did trust Candelario, Triantos and Landi. Although Pacitto has never worked in IA, he did receive an eight-hour day training because Finley believed it was good for union experience.

The disciplinary charges against Austino regarding the T.C. arrest indicate that Pacitto was present for the arrest, when in fact he was not present for the arrest. (J-1, page 4, paragraph 7.)

Just because he was a new sergeant, did not lessen his obligation to report what he perceived as a wrongful arrest, even if it was by a senior training officer. The protocol is that you file a critical incident report, and it is investigated. You do not notify the municipal prosecutor or the public defender.

**Richard Tonetta** is the city solicitor for Vineland and has been practicing law since 1980. He has been working for the city for almost thirty years under different administrations. Vineland is the largest city in the State of New Jersey with sixty-nine square miles and a population of approximately 70,000. Vineland is a non-partisan, Faulkner Act community with a mayor and council, nine department heads that are headed by directors. He is the director of the department of law and represents the municipal government, mayor and council, all the employees within the city, and handles claims against them as city employees as well as claims against the council, the mayor and the City of Vineland. His job is to protect the City from liability.

The City has a "Whistleblower's" policy in line with N.J.S.A. 34:19-1 to 34:19-14, the "Conscientious Employee Protection Act," which protects employees from retaliatory action for reporting wrongdoing (R-26). If an employee sees any wrongdoing, they are free to report the information to the City so that it can take appropriate action. The City wants to avoid litigation and by undertaking an investigation and fixing a problem, they may avoid litigation.

The City of Vineland has a police department, which is headed by the public safety director. The police officers are employed by the City. The appointing authority is the mayor and is the person in charge of hiring, firing, and disciplining public employees. The police are responsible for following the City policies as well as the police department policies, although the police fall more under IA than they do under human resources (HR).

The Cumberland County Prosecutor's Office handles criminal matters and internal affairs matters involving the Attorney General (AG) guidelines (J-5) and is the lead law enforcement agency within the County of Cumberland. There are many times that a matter is referred to the prosecutor's office for alleged IA violations and the prosecutor's office will return it to the city, stating that there is no 2C violation or no IA violation, but an

administrative review may be in order regarding some type of disciplinary action. The City has the right to conduct its own investigation regarding H.R. issues and City policy violations.

In or about December 2016 Mr. Tonetta became aware of a problem with the MVR system in the police cars and the telephones. O'Neill and Armstrong had come to Tonetta stating that the IA commander Finley was asking them questions and Tonetta advised Finley to 'stand down'. He was concerned with protecting the city from lawsuits and was unsure if these individuals intended to pursue civil litigation as a result of their privacy rights being violated. The matter was sent to the prosecutor's office to determine whether there was any criminality in terms of the wiretapping itself. The prosecutor's office had done an investigation relative to the wiretapping issue and in June 2017, Tonetta made a request for a copy of the investigation which he did not receive. (R-35.)

Mr. Tonetta became aware of a CEPA complaint made by Austino to the chief that was forwarded to the solicitor's office. (R-37.) This complaint was investigated by Ed Duffy, an associate city solicitor, who rendered a report finding Austino's claims did not amount to retaliatory harassment against Austino. (R-39.) Tonetta was satisfied that Duffy had done a thorough job, but Austino was not and felt an independent investigator should be hired. So, they sent out an RFP (Request for Proposals) and hired Robert Pinizzotto, Esq., to do an investigation. However, he did not complete the investigation because he retired and moved to Florida in 2018. After consulting with Austino, the chief and the local union, it was agreed that Mr. Gelfand would continue the investigation. He was a JIF attorney and he and his firm defended numerous police officers in the area. His job was to investigate the Austino complaint as well as other complaints they had received from the PBA. Austino filed another grievance dated August 3, 2018, on behalf of the Vineland Police Captain's Association, who also have a collective bargaining agreement with the City. (R-44). Mr. Tonetta explained it became an ongoing investigation and as additional allegations were made, they were given to Mr. Gelfand to investigate.

The City received a draft civil complaint on behalf of the PBA, prepared by their attorney, David Long, Esq., alleging numerous claims of violations of the criminal code

and municipal policies by Chief Beu, Captain Austino, Finley, Riordan and others. (R-23.) This complaint was never filed in Superior Court or anywhere else. Tonetta stated that in his experience, there is always a back and forth between the union and management, but this was different as there were so many complaints that it caused Tonetta concern about the management of the police department. The city believed that the police department's upper management was acting as if it was an independent agency that was not required to answer to the police director, or the mayor of the city and they did whatever they wanted. If you were not part of the inner circle comprised of Chief Beu, Captain Finley, Austino, and Riordan who was the head of IA, and did not do what they wanted to do or how they wanted it done, you were a mark. The police director was Edwin Alicea at all relevant times in this matter and he was in charge of policy, procedure, and budget, and would act as liaison between the mayor and the police department. The police chief is in charge of the daily functions of the police department. Even though the police department is a quasi-military operation, it is still an agency of the municipality, which is accountable for the actions of its police department. The PBA attorney served a demand letter seeking \$1.5 million dollars and a demand that Chief Beu resign immediately.

After he received the complaint at the end of November 2018, Tonetta met with Beu, Austino, Finley and Riordan and made sure they had copies. Austino, rightfully so, forwarded the draft complaint to the county prosecutor since there were allegations of criminal conduct contained therein, which was the function of the county prosecutor to review. Also, the AG Guidelines require that any IA allegations against the police chief be handled by the prosecutor's office. The prosecutor's office had the complaint for about a year before it was remanded back to the city in 2019 for an administrative review. It was around this time that the matter was referred to Mr. Gelfand to do an investigation.

Tonetta received several grievances from Austino (R-46) as well as from members of the PBA. Every time a new allegation was raised, it was referred to Gelfand as part of a 'rolling' investigation. Austino claimed that upon receipt of the draft civil complaint, he and Beu forwarded it to the prosecutor's office. Austino stated that he was exonerated by both the prosecutor's office and the IA unit and the city's continuation of the investigation of the baseless threatened lawsuit was in violation of his rights (R-46).

Tonetta disagreed with this and although the prosecutor found nothing in terms of a criminal nature, they did not address the CEPA claims and as the city solicitor; Tonetta was concerned with protecting the city from liability. The investigation started because of Austino's CEPA claim, and it was not a 'rogue' investigation as Austino claimed in his grievance.

Austino objected to the July 2019 request from Gelfand to Chief Beu to release Austino's IA files (R-46). Tonetta testified that the City has the right to access IA files to protect the city from civil litigation, subject to the review of the police chief that there is a good cause reason to release the IA files. Austino's grievances were an attempt to prevent the review of the IA files and thwart the City's investigation. The City's attempt to obtain the IA files for Mr. Gelfand's review was an ongoing issue and they had to reach out to the prosecutor's office in an attempt to get the files.

Mr. Gelfand was not conducting an IA investigation; he was conducting a city of Vineland human resources investigation based on the CEPA claims filed by Austino and everybody else.

Tonetta was satisfied that Mr. Gelfand did an outstanding job in his investigation.

Michael Benson, Esq., represented the city in prosecuting the disciplinary proceedings against those officers involved in the B.B. strip search matter, including Lt. Pedro Casiano, Lt. Alan Pagnini, Sgt. Anthony Ruberti and Officer Ryan Madden. Mr. Benson, although in private practice, was also an associate solicitor for the city of Vineland and handled employment matters. The associate solicitor position was an appointed position. All of the officers were represented by counsel. An August 24, 2017, email from Mr. Benson to Mr. Tonetta advised "There were also some truthfulness questions concerning Lt. Casiano's denial of certain facts during his IA interview with Lt. Wolf." (P-16, paragraph 3). Mr. Benson filed a letter brief to Judge Curio dated October 31, 2017, which Mr. Tonetta was copied on. In the letter brief, Mr. Benson states "Lt. Casiano attempts to suggest that he believed Madden and said the bag was somehow placed in the waistband of the subject's underwear. This is never referenced by anyone and conflicts with the numerous references in Madden's Incident Report (to all three anal



exposures) to the subject "spreading his butt cheeks" and Madden observing the bag "sticking out of his anus." During the third exposure, Madden is very specific and graphic: The subject ". . . stood up, pulled his pants down bent over and spread his butt cheeks" and Madden. . . "attempted to grab the plastic that was sticking out of the subject's anus to pull the controlled dangerous substance from his anal cavity." The last sentence in the paragraph states "It is entirely disingenuous of Lt. Casiano to deny a fact that is so established by all other accounts." (P-15, page 3.)

Mr. Benson drafted the disciplinary charges against Austino in this case. (J-1.) Mr. Tonetta reviewed the specifications in the charges. The charges in the FNDA state that Beu and Austino perpetuated the utterly baseless claim that Casiano lied in connection with the B.B. matter all to undermine, discredit, and defame him as he sought to advance in the promotional process. (J-1, page 3, paragraph 6.) Tonetta did not have any problem with this charge when he reviewed the specifications.

B.B. had made a citizen's complaint against the street crimes unit. Mr. Tonetta would not have had any involvement while the matter was in IA.

Mr. Tonetta has heard of the name T.C. He did not make a complaint about being arrested for disorderly conduct. Mr. Tonetta was aware that T.C. either entered a plea or was found guilty of disorderly conduct. Mr. Tonetta acknowledged that if a plea was entered, a factual basis for the plea must be entered before the judge accepts a plea.

In January 2017, Pacitto's friend Fanucci became the mayor. Douglas Long, the attorney for the PBA, sent Chief Beu a letter dated June 14, 2017, which Tonetta saw (R-10). The letter raised wiretapping allegations and privacy violations. The letter was six months after he had already learned of these violations in December 2016 and had meetings with O'Neill, Armstrong, the Chief, and Finley. The Chief and Finley assured him it was a computer glitch that was taken care of, and the telephone removed. The county prosecutor had already investigated the matter and found no criminality. Long expresses his concerns that his members may be retaliated against for reporting the wiretapping to the prosecutor's office. Tonetta did not respond to the letter.

The draft complaint was prepared by Douglas Long's law firm, Grace Marmero and Associates and received by the city in November 2018. (R-11.) Most of the allegations raised in the PBA draft complaint were not something new as relating to Austino.

Captain Finley is referenced as abusing his authority in numerous paragraphs of the complaint. Finley retired sometime after the city received the draft complaint and was thereafter hired by the city to investigate human resource investigations. In that position he was supervised by the personnel department. Tonetta said he was not thrilled with this decision but had no right to object. Gelfand's report was not completed until November 2021, so they did not have the information contained therein until after Finley was hired. There were rumors, but that was not something they would act on.

Doug Long was a friend of the mayor and an acquaintance of Tonetta. The mayor attended Mr. Long's sentencing in federal court and had asked Tonetta to go with him and explain what was going on and he did.

A June 15, 2017, email from Ron Henry at the Cumberland County Prosecutor's office to Thomas Riordan, copying in Harold Shapiro also from the prosecutor's office indicated that Tonetta was permitted to have copies of the investigative file regarding Pacitto's wiretapping allegations against Austino since his department has been named as a defendant in a CEPA complaint. (R-35.) Tonetta did not believe this was the unfiled complaint from the PBA but the complaint of Pacitto regarding wiretapping that was forwarded to the prosecutor's office for investigation. On June 14, 2017, Beu had received an email letter from Mr. Long regarding the wiretapping (R-10) and the next day, Mr. Tonetta was trying to get a copy of the investigation. The prosecutor's office found no probable cause to believe a crime had occurred.

IA documents are extremely sensitive, and Mr. Gelfand obtained a lot of IA files to review and prepare his report. Tonetta had nothing to do with whether Pacitto was entitled to obtain a copy of Gelfand's report. Usually, the victim in an HR investigation gets a summary of the report, not the entire report. Where personal or confidential information is obtained it is not shared with the complaining witness because people would not be forthcoming in the interview process if their names were disclosed.

Tonetta had concerns that Austino himself was releasing IA information in his lawsuit which is public information.

Captain Austino conducted an IA investigation regarding the B.B. matter and concluded that Pedro Casiano allowed an illegal and improper body cavity and strip search to be conducted. Captain Austino did not make any specifications against Casiano of untruthfulness. (R-33.) The allegation that an officer lied is of huge consequence. Officers have been terminated because they were considered 'Brady' officers. If you cannot testify in court, you cannot do investigations. If you cannot do investigations, you cannot be a police officer. Austino, as Acting Chief, signed both the PNDA and FNDA against Casiano and there was no charge of untruthfulness set forth in either. (R-14.)

Austino's federal lawsuit against the city in 2020 alleged that Casiano lied during the B.B. investigation. (R-78, paragraph 42).

**Todd Gelfand** testified on behalf of the respondent. He is an attorney admitted in 1995 and familiar with Administrative Law proceedings, employment law, personnel and human resource issues, and has conducted many investigations and litigated many cases. He has worked for a number of police departments and is familiar with IA procedures and the AG Guidelines. Mr. Gelfand had previously represented Vineland in the White matter which was a civil rights case involving the police department. Gelfand worked with Captain Austino and Sergeant Riordan in gathering discovery for that case which included the production of IA files. Gelfand found Austino to be a professional and a good administrator and was prompt, diligent, and responsive to all of his discovery requests when he worked with him on that case. He did not believe he had a conflict since he represented the City in the White case and not Austino, although Gelfand did defend him in a deposition strictly as a Rule 30(b)6 representative of the city.

Gelfand had also represented the City of Atlantic City in a number of civil rights cases pending in District Court in Camden where the magistrate had ordered that IA files be produced, subject to a confidentiality order, despite objections from the city. In

Gelfand's experience, the state court judges were more sensitive as to the confidentiality of the IA files and restricted its disclosure more than the federal magistrates.

The City of Vineland has a city-wide CEPA policy, policy 1151 as well as policy 1152 which applies to any workplace wrongdoing. (R-26.)

Gelfand prepared a final supplemental report dated November 22, 2021, regarding his investigation, findings and conclusions (R-1) together with the exhibits supporting same. (R-2A and R-2B.)

The City received the draft PBA complaint in November 2018. Chief Beu forwarded it to the prosecutor's office.

Gelfand was contacted by Tonetta to do an investigation into the PBA complaints as well as the complaints of Austino sometime in 2019. Gelfand asked Austino if he had a problem with him taking on this investigation since he had had a good working relationship with Austino, and he recalls Austino not being very happy about it and asking Gelfand why he would want to get involved in that rather than defending the cases for the city for the insurance carrier. Gelfand then considered further whether to take the assignment or not but eventually decided to take it despite Austino's concerns. He meant to call Austino back after their conversation and advise him that he decided to take the case and he regrets not having done so and apologizes for that. Gelfand initially mistakenly indicated to Austino in a telephone conversation they had around May 29, 2019, that he had only been given the PBA complaint but corrected that and advised him that he was investigating all of the complaints. Austino never believed him.

Gelfand contacted Doug Long, the attorney who drafted the PBA complaint who identified Craig Scarpa, Greg Pacitto, and Dave Cavagnaro as those individuals Gelfand should interview, which he did on June 11, 2019. Mr. Gelfand had made notes regarding his timeline of events to refresh his recollection. (R-132.) On June 26, 2019, Gelfand emailed Tonetta and Chief Beu that he would need to review IA files to conduct an investigation. At that point he knew he was also to be investigating Captain Austino's complaints, which also required a review of IA files.

After Gelfand's initial conversation with Austino regarding taking the case, Austino filed a July 17, 2019, grievance contesting Gelfand's involvement (R-46). It was filed with the County Prosecutor's office.

Upon his review of the PBA draft complaint and Austino's HR complaint, it became apparent that Gelfand would need to review certain IA files, and he requested them from Chief Beu. The PBA was alleging that the IA files were used as a tool by Austino, Beu, and Finley to retaliate against them. The Chief of Police is in charge of the custody and control of the IA files. The Attorney General IA Guidelines (IAPP) in effect as of July 2014 governed the IA files involved in this case (J-4). The IAPP Guidelines were revised in November 2022 (J-5). The Chief of Police is the keeper of the IA files, and the guidelines outline when a chief can release the files if there is a request for them. Gelfand had a number of IA files that had been released to him for the White case and he was requesting permission from Chief Beu to review them for this case as well. Chief Beu told Gelfand on July 17, 2019, that he had consulted with the New Jersey State Association of Chiefs of Police, who advised the Chief that he had broad discretion to either let Gelfand have them or not and if it was up to them, they would not give them to him. The Chief told Gelfand in that July 17, 2019, conversation that Austino had filed a grievance with the County Prosecutor's office stating that the whole investigation assigned to Gelfand was illegal and he should not be permitted to see any of the IA files. (R-46.) Chief Beu agreed with Austino about barring Gelfand from a review of the IA files.

Gelfand was able to get a copy of the prosecutor's investigation report of the PBA wiretapping complaint from Tonetta, who received a copy from the prosecutor's office (R-35).

In a June 28, 2019, telephone conversation, Gelfand requested Austino to provide him with any documentation regarding Austino's CEPA claims regarding the street crimes unit, which Gelfand never received. In his interview of Austino two years later, Austino only identified the B.B. case as evidence of the practice of illegal searches by the street crimes unit. Austino also complained that Casiano's promotion to deputy chief was retaliatory against Austino.

On July 29, 2019, Gelfand wrote a letter in follow up to a telephone conversation he had with first assistant prosecutor Harold Shapiro requesting the IA files. (R-47). The request included files relating to the June 30, 2017, grievance of Austino (R-38) as well as the August 4, 2018, wiretap grievance (R-44) and the February 14, 2019, grievance (R-45). Gelfand informed Mr. Shapiro that he was investigating all of the complaints (R-47). Gelfand received a response from Harold Shapiro on August 22, 2019, indicating that "The Cumberland County Prosecutor's Office shall not direct the Vineland Police Department to release any documents to you." (R-48.) Gelfand thought this was ambiguous and sought clarification in an email he sent September 3, 2019, to Mr. Shapiro, copying in Beu, Austino, Doug Long, and Tonetta. (R-49.) Mr. Shapiro believed his letter was not ambiguous and also took exception to the fact that he had copied in Doug Long. In a telephone conversation with Shapiro and the prosecutor, Jennifer Webb-McRae, they told Gelfand that the decision was Chief Beu's to make, not that they were directing him not to turn over the files. Shapiro sent a follow up clarification letter. (R-58.) On or about September 5, 2019, Beu made allegations of retaliation and filed a CEPA complaint (R-51), which also became part of Gelfand's investigation. This came about at the same time Ron DeMarchi made allegations against Beu that were reported in the newspaper.

Gelfand sent an email to Chief Beu and Rick Tonetta advising that he had received a letter from Harold Shapiro and stated: "As I told you previously his office is leaving this question to the chief's discretion and not making a decision about my review of internal affairs files." (R-60.) As of September 18, 2019, there was no doubt in Gelfand's mind that Chief Beu had the authority to release the IA files. Gelfand eventually received the IA files in or around May 2020.

While he was waiting to get the IA files, he tried to continue with the investigation and tried to interview Austino and Beu and advised them of same on September 24, 2019 (R-61). In the fall of 2019 Gelfand did have interviews with Austino, Beu and Finley, but they were limited since he did not yet have the IA files.

Austino sent an email on September 23, 2019, objecting to Gelfand's access to his IA files on the grounds that the "invented" claim of wiretapping had already been

investigated by the county prosecutor's office and the VPD IA unit and he was exonerated. (R-62). Austino in his interviews with Gelfand had stated that he believed that the allegations were contrived, made up and frivolous. Captain Austino did give the order to activate the livestream by stating "make it work" causing it to be turned on. Austino knew there was a problem with the MVR system and that it was not recording what needed to be recorded for monitoring and supervision purposes. The officers had complained to Chief Codispoti about it a year earlier and he had put a stop to it. The officer's privacy rights were a real issue that had nothing to do with Austino and was factually true.

Although the county prosecutor's office concluded no crime was committed, the matter was returned to the VPD IA unit for an investigation of whether any administrative violations occurred, and it was covered up by Tom Riordan. No investigation was done and Chief Beu signed off on it because Beu, Riordan, Finley and Austino were in this AB group that was using the internal affairs process as differential treatment to retaliate against one group and favor another group. There was no interview of Austino by IA which is a critical stage of an IA investigation. Tom Riordan told Gelfand that based on the county prosecutor's investigation and talking to one or two other witnesses, it was determined that there was no violation of anything, even administratively, so there was no need to interview Captain Austino. Captain Austino had advised Gelfand in his interview with him and his attorney Sheffler that he was not interviewed because he made it known he would involve his 5<sup>th</sup> Amendment right. Chief Beu signed off on the investigation.

Austino and/or his attorney put off requests for an interview and when they finally agreed to an interview, there were objections that Gelfand was not permitted to ask questions about the very things he had advised them he was investigating. At one point in an interview with Austino and Sheffler, when Gelfand was asking about Austino's complaints, Austino said he was withdrawing them and did not want Gelfand to investigate and that he would rather proceed in court. Austino's and Beu's complaints were essentially the same and Gelfand did not have the option of dropping the investigation. Gelfand conferred with Tonetta who advised him to continue.

Gelfand received a letter, dated September 26, 2020, from William J. Fox, Esq., from Philadelphia who was now representing Austino. (R-65.) The letter advised that it was Mr. Fox's understanding that what Gelfand wanted to investigate was already investigated and disposed of. Gelfand responded to Mr. Fox outlining the scope of the investigation. (R-66.) Gelfand requested an interview with Austino and Mr. Fox (R-68). Gelfand followed up with Mr. Fox by email dated November 4, 2019. On November 13, 2019, Gelfand interviewed Austino with Mr. Fox present, and at the time had a copy of the county prosecutor's investigation report regarding the wiretapping matter and was asking questions of Austino off that report. Gelfand believes Austino's complaint about him illegally obtaining IA files was based on this.

A November 4, 2019, email from Edwin Alicea was sent to Chief Beu and Austino requesting that they cooperate with Gelfand's investigation. (R-15.) Alicea had issued a series of directives along those lines in or about January 2020.

Chief Beu, via email on January 27, 2020, advised the reason he was not granting Gelfand access to the IA files was based on the Austino complaint of December 18, 2019, to the prosecutor challenging the validity of the investigation and alleging Gelfand improperly accessed and produced confidential IA files in an interview and used it to harass and intimidate witnesses. Chief Beu found that good cause did not exist to turn over the files. (R-19.) Gelfand said this was a preposterous good cause explanation after they had been waiting six months to get the IA files and that this was further stonewalling. On January 29, 2020, Police Director Alicea directed Chief Beu to forward him a copy of the complaint Austino filed as to Gelfand and to turn over the files. (R-20.) Gelfand never saw a copy of the complaint against him and does not know if it was in writing. Chief Beu did not respond and was issued charges for insubordination, and then the prosecutor's office took over the Vineland police IA unit.

There were a series of emails between May 21 and May 22, 2020, confirming Gelfand was told by Benson who was in contact with the prosecutor's office that they were inclined to allow him to review the files once he signed something saying what he was using them for. Gelfand signed an affirmation and First Assistant Shapiro confirmed with Benson that he was able to give Gelfand the IA files to use for investigation purposes



and Benson then turned over a thumb drive that had been given to him by the prosecutor's office representing the VPD files he was looking for. (R-84.) Gelfand received the files almost a year after initially requesting them, but only a couple of days after they asked the county prosecutor for them.

On February 3, 2020, Captain Austino filed a civil lawsuit in federal court (R-78). There was also a lawsuit by Chief Beu filed in federal court that named Gelfand as an individual defendant. (R-82.)

Gelfand had initially prepared a draft report (R-77) prior to his final report marked as R-1.

Gelfand received a letter from the prosecutor's office advising he was under criminal investigation based on the December 18, 2019, complaint made by Austino regarding his access, possession and or disclosure of confidential VPD IA files involving PSU 16-0099, the wiretap allegations. (R-85.) This report (R-34) was given to Gelfand by Tonetta after Tonetta had permission from Harold Shapiro and Ron Henry to have it for purposes of investigating the PBA's complaint that Austino had illegally wiretapped them.

In his interviews with Austino, Austino said he never alleged Gelfand committed a criminal offense, only that his possession of that report was illegal. Gelfand did consult with an attorney, Steve Petersen, and was scared that he could be arrested driving through Vineland and gave his wife instructions of what attorney to call and how to get in touch with bail bondsmen should she suddenly hear he was arrested in Cumberland County. On September 18, 2020, Gelfand's attorney, Mr. Petersen received a letter from the prosecutor's office declining criminal prosecution and administratively closing the case after Gelfand and his attorney sent in a letter explaining how he had obtained the file. (R-87.)

Once Gelfand obtained the files, he reviewed them all and tried to match them up with the various complaints made by everyone.

The FNDA, paragraph four, references a 2016-2017 timeframe regarding the "soda fund" matter. (J-1.) He did finally receive that file in May 2020. Paragraph five references the MVR system and wiretap issues. Paragraph six references the B.B. matter. Paragraph seven references the T.C. arrest on June 10, 2017. Gelfand received all of these IA files in May 2020. His report starts off with the December 2015 Finley take-home vehicle and Len Wolf and does not implicate Austino at all.

The soda fund matter involved prior Chief Codispoti's maintenance of a bank account that was not in the name of the city and not audited as part of city-maintained accounts. It was used by the Chief to throw holiday parties, buy Wawa gift cards for the PD clerical staff during the holidays, and other unauthorized purchases. Austino got involved when he was assigned as the Lieutenant at the training facility and discovered approximately \$4,000 cash in a safe with a ledger. He was uncomfortable with this and learned that the source of the cash was some combination of fees for training courses at the academy and the recycling of brass from the firing range. Lieutenant Austino brought it to the attention of one of the captains in police administration who said to take the money and deposit it into the soda fund account. This was a bank account that existed and into which monies from the police department soda machine would be deposited. It was common knowledge that the soda fund existed, but Austino had nothing to do with it and believed it was a lawfully created bank account that the city was managing. He had no reason to think otherwise. Lieutenant Austino looked further into the brass scrapping and thought that scrapping the brass is not a proper municipal government way to dispose of the brass and found that there is some sort of auction process the city may need to go through before scrapping the brass. He then put out an order directing that the brass should be stockpiled and not sold back for scrap. Austino believed that they might need to go through a website, GovDeals, to properly dispose of the brass so the cash would make it into some properly authorized municipal account. Austino then went on family leave for several weeks and when he returned, he discovered the brass was missing. Austino was mad and spoke to Sergeant Garrison who said he was told to scrap it by someone else. Austino went to Lieutenant Bowers in IA. Sergeant Wolf was in IA at the time. Gelfand said Bowers made a comment to Austino that before you go looking into why the brass was sold out from under you, you should look into it further because they

were probably told or ordered to do so. Austino did not file a critical incident sheet which would trigger an IA investigation.

Austino, Finley and Beu continued investigating the soda fund by gathering information and talking to the clerical staff who maintained the account, who stated that the money was not always accounted for and that they had ATM cards and could access cash. Sometimes they received receipts and other times did not. Michelle Pedulla, a clerical staff member's name, was on the account which she did not know until she was doing some online banking at her own bank where the soda account was maintained. She told Austino and Finley that she reported this to someone else in police administration. Gelfand says Finley definitely (and he believes Austino) claimed that they went back to Wolf and directed him to continue the investigation as an IA matter. Finley is not the chief of police and he is not the IA commander. If he thinks an IA investigation should be conducted, a critical incident report should be filed. The second problem is that Finley tells Wolf that Chief Codispoti is involved and according to the guidelines, if the Chief is involved, it has to be investigated by the county prosecutor's office. Wolf said he was not directed to do an IA investigation. He was told about the IA investigation that Finley and Austino were already doing. Wolf was told by Finley that the allegations were criminal and if so, any criminal allegations must be forwarded to the prosecutor for investigation and would have to stop at the local level. Gelfand stated that there were two or three meetings over two or three days in which Wolf and all three, Finley, Beu, and Austino discussed the IA investigation. Wolf told Chief Codispoti and Lieutenant Bowers. Bowers was somehow involved in the soda fund for receiving money to pay for a hotel for a conference that she might not be reimbursed for through regular city procedures.

Beu, Austino and Finley all gave statements to the prosecutor's office and accuse Wolf of wrongdoing by tipping off Chief Codispoti. Once they find out Wolf has told Codispoti, Captain Beu confronts Codispoti about this account and that he has to close it and it is improper. According to Beu, Codispoti is resistant and believes the account is kosher and they are using it for kosher expenses that they are allowed to use municipal money on. The prosecutor's investigation file reads that Director Alicea brought the soda fund allegations to the prosecutor's attention. Gelfand believes Beu and/or Austino started consulting with the director and/or Tonetta.

Gelfand does not believe Wolf was disciplined or taken out of IA because of the soda fund. There was another account not being managed by the city, the community policing fund, and that is what Wolf got jammed up and disciplined for.

Gelfand was retained by the City of Vineland to investigate alleged abuses of VPD's internal affairs process. The goal and focus of the investigation was to determine whether VPD's IA processes were used in a nefarious way. After completing his investigation, Gelfand concluded that in general, the PBA's complaints that Chief Beu, Captain Austino, and Matt Finley, and "at times" Tom Riordan participated in the overall course of differential treatment and retaliation were correct.

Gelfand acknowledged that he has not had the specific special training in internal affairs that is required by the IA Guidelines and required of an internal affairs investigator.

Gelfand acknowledged that under the IAPP an investigator is supposed to be unbiased. Gelfand also acknowledged, soon after his investigation began, that on December 18, 2019, Captain Austino and Chief Beu had made accusations of criminal conduct against Mr. Gelfand to the CCPO. Gelfand learned of the existence of these allegations in February 2020, when Beu told the city administration, Edwin Alicea, Gelfand, and Tonetta that the reason he would not give the relevant IA files to Gelfand was because Austino had made criminal allegations. Gelfand testified that he was "scared" after learning of these criminal charges because he thought that he would be pulled over driving through Vineland and arrested. As a result, Gelfand hired a lawyer. When asked whether he was able to set these circumstances aside when conducting his investigation, Gelfand stated "So did I set it aside entirely? No, I didn't." Gelfand believes that this was evidence of obstruction, and that Austino put out what he believed to be false allegations to keep Gelfand from doing the investigation.

In conducting his investigation, Gelfand reviewed fifteen (15) IA files relevant to the community policing fund, the soda fund, the B.B. strip search, the T.C. arrest, and the MVR recording system issue. Gelfand acknowledged that at any time in VPD's large police force there could be between 90-150 active officers, and that there could generally

be about 100-130 IA complaints each year. Gelfand acknowledged that over the relevant five-year window from 2015-2020 that could translate to a total of 500 IA complaints relevant to VPD, but he only reviewed fifteen files because that is what he believed to be most relevant to evaluate the differential treatment in the department. Ultimately, Gelfand determined that there were discrepancies between how the complaint investigation process was handled between the PBA members and investigations pertaining to Beu and Austino. Gelfand acknowledged that as of the date of his testimony in this case, his firm had been paid \$245,828.03 for his work on the investigation and providing testimony in three separate cases pertaining to the investigation. (P-12.)

Gelfand says that he “may have” helped prepare the specifications for the charges against Austino.

Gelfand believes that there were two factions in VPD, Team A and Team B. Gelfand stated that he used this terminology to refer to associations of people who look out for each other and try to “screw” the people on the other team. Team A consisted of Rudy Beu, Adam Austino, Matt Finley and “sometimes” Tom Riordan. Team B included members of the PBA and anybody that would be presumed to be PBA “sympathizers.” Gelfand acknowledged that Austino and Riordan were PBA members. The specific group of PBA members that Gelfand could identify included Greg Pacitto, Christopher Landi, Adam Shaw, Leonard Wolf, Sergeant Armstrong, Ron Demarchi, Richard Burke, and John Gabriel. Although conducting his analysis as to these factions, Gelfand stated that he did not know whether Austino retaliated against every member of Team B. More broadly, Gelfand believes that Austino retaliated against every member of the department that had their privacy rights violated by the MVR incident because Austino believed their complaints were “contrived and frivolous.”

Gelfand's investigation into the soda fund concluded that Lieutenant Wolf was disciplined by Beu for informing Chief Codispoti that Beu, Austino, and Finley were investigating the fund. The soda fund matter arose when Austino found \$4,000 and discovered that the money came from someone selling brass bullet casings from the firing range to scrappers. As the training lieutenant that was working on the firing range, Austino ordered that brass stop being scrapped. Soon after, Austino went on paternity

leave for the birth of his child. When he returned, he discovered that the brass was gone, and went to his supervisor, Captain Lauria, to inquire about the cash and the brass. Lauria directed Austino to turn over the cash to Michelle Pedula, a PD clerical worker who officers would turn money into, some of which went to the soda fund. Austino also brought the issue to Lieutenant Bowers, who was in IA at the time, and inquired if she knew anything about where the brass went.

Gelfand takes exception to the fact that Austino did not file a critical incident sheet to trigger an IA investigation but acknowledged that the IA process does not need the proper form of written document to initiate the process. Austino was not in IA at the time of the soda fund investigation. He was in IA from January 2016 to May 2016.

One day, Beu, Finley, and Austino were discussing the soda fund issue with Leonard Wolf, who did not agree with the tone of the conversation as it pertained to Chief Codispoti. On June 22, 2015, Wolf informed Codispoti that Beu, Finley, and Austino were performing an investigation into the soda fund. Austino was called into an interview at the Cumberland County Prosecutor's Office about the soda fund and the sale of the brass. At this interview, Austino informed CCPO that he believed that Wolf informing Chief Codispoti of the investigation was improper. Gelfand cannot recall whether Austino asked Wolf to conduct an IA investigation during the June 22, 2015, meeting.

After the CCPO completed their investigation into the fund, an IA investigation took place. Riordan, who was in IA at the time, completed his investigation in April of 2017 (R-32) and recommended that charges be brought against Wolf. Wolf was promoted in January 2017. Wolf was ultimately not charged with discipline for his involvement in the soda fund matter. Triantos conducted an investigation into the community policing fund from June to August 2017. On August 7, 2017, a PNDA and FNDA were issued to Wolf for his involvement in the community policing fund for not reporting the facts of the community policing fund to law enforcement for investigation in a timely manner.

Gelfand believes that the community policing fund punishment that Wolf received was actually in lieu of being punished for the soda fund matter. When Chief Beu was presented with the soda fund IA findings, he declined to charge Wolf with anything.

Gelfand recalls Wolf informing him that Chief Beu came up to him and told him to accept discipline and get a promotion in exchange. Gelfand believes that although Wolf was not charged with anything pertaining to the soda fund, that his punishment from the community policing fund was part of the retaliation for going directly to Chief Codispoti during the soda fund matter. Gelfand believes that "although it doesn't appear that these things happened immediately in sequence, it's still more plausible that it happened the way Lieutenant Wolf says then the way Captain Austino and Chief Beu were telling me it." When asked how this perceived retaliation related to Austino, Gelfand testified that Beu, Austino, and Finley operated as a "triumvirate" and that they would meet for hours at a time and try to plan these kinds of retaliation against the parties that slighted them. Regarding Wolf's transfer out of IA, which occurred ten months after his promotion, two months after his discipline for the community policing fund, and along with five other officers who were transferred at the same time, Gelfand believes that this was part of the soda fund retaliation regardless of the lack of temporal proximity.

Gelfand's investigation into the MVR found that Austino knew or at least should have known that Chief Codispoti had ordered that the livestreaming function be turned off, at the time when Austino made his "make it work" order to fix the recording issues with the system. Gelfand's report (R-1, page 105) states:

Based upon the interviews and evidence provided to me, it indeed appears quite clear to me that **Captain Austino** directed the activation of the livestream audio feature of the MVRs in December of 2016, **not** for purposes of spying on PBA members, but rather because the department was having difficulties setting up the MVRs or other recording devices so that "triggering events" for the recording of video in the police cars, for example prisoner transports, would be recorded with **audio and video**...I indeed believe that this, rather than any form of "spying on officers" was his true motivation for activation of the live stream audio.

Despite this finding, and his belief that the "make it work" order came from a "noble idea of basic supervision," Gelfand maintains that Austino acted improperly by ordering that electronic equipment be made to work in a way that previously resulted in violations of the officers' privacy rights. Gelfand acknowledged that there had been numerous problems with the MVR system and that there was no evidence that the livestream was

monitored or recorded, and that there was no finding of a criminal code violation by the CCPO. Gelfand believes that Austino felt that he was subject to retaliation because of the soda fund matter and that he was going to get his "pound of flesh" out of the PBA members he believed were supportive of Chief Codispoti. Gelfand did not point to any specific form of retaliation that could be connected to this issue, other than his belief that the order was a "blatant violation of the Wire Tap Act." Gelfand stated that when Austino indicated that the PBA's privacy concerns regarding the use of MVR were frivolous and contrived, that particular belief was caused by Austino entering "retaliation mode" after the soda fund investigation.

The B.B. matter occurred in March 2016, when Austino was in IA. An IA investigation began after CCPO found that there was an illegal strip search. Despite this finding, Gelfand believes that the search was not a body cavity or strip search as defined by the AG guidelines, Vineland's policy, or by case law. Gelfand testified that the CCPO only reviewed Ryan Madden's report and did not have any interviews or testimony.

The VPD IA investigation file on the B.B matter begins with a mediation letter from Mike Benson to Judge Curio. (P-15.) The letter states in part:

Lieutenant Casiano attempts to suggest that he believed Madden had said the bag was somehow placed in the waistband of the subject's underwear. This is never referenced by anyone and conflicts with the numerous references in Madden's incident report to all three anal exposures, to the subject spreading his butt cheeks and Madden observing the bag sticking out of his anus. During the third exposure Madden is very specific and graphic. The subject stood up, pulled his pants down, bent over and spread his butt cheeks and Madden attempted to grab the plastic that was sticking out of the subject's anus to pull the controlled dangerous substance from his anal cavity. . .Sergeant Roberti further confirmed in his IA interview that Madden had approached him and Lieutenant Casiano with a specific account of the subject exposing a piece of plastic in the subject's anus. Lieutenant Casiano himself is seen in the station hallway video observing Madden's re-enactment of the subject's exposure. It is entirely disingenuous of Lieutenant Casiano to deny a fact that is so established by all other accounts.



In an email from Mr. Benson to Rich Tonetta (P-16), Benson states:

There were some truthfulness questions concerning Lieutenant Casiano's denial of certain facts during his IA interview with Lieutenant Wolf. In any event, at some point Chief Beu offered to reduce it to a 15-day suspension and then I'm told a ten-day was apparently offered. I have not been involved in the reductions although I don't disagree with them. I think the degree of concern generated by this case was and probably still should be the fact of the unique nature of the policy violation in this case that could result in a nasty civil claim.

Gelfand could not confirm whether he had seen P-15 or P-16 prior to drafting his report. Gelfand's contention in his report is that Austino reached "flawed" legal conclusions based on his own analysis. Gelfand was shown various billing records from Mr. Benson that indicated that Austino had met with Benson during the drafting of Austino's report (P-11) but was of the opinion that Austino had made his *conclusion* prior to these meetings, despite the report not being completed until after these meetings took place. The billing records also indicated that Mr. Benson reviewed case law and literature regarding strip and body cavity searches prior to meeting with Austino, Beu, Wolf, Riordan, and Tonetta on March 23, 2017. Although Wolf was at these meetings, Gelfand said that he chose not to interview Wolf because he did not want his report to be "lengthier than it was already." Gelfand maintained on re-direct examination that he believed Casiano was truthful in his interview when he explained that he understood the bag of controlled dangerous substances on B.B.'s person to be in plain view. Gelfand testifies further that he believes this scenario is another example of the Team A/Team B dynamic that put factions of people within VPD against each other.

Gelfand testified that Sergeant Bontcue was a victim of retaliation in the B.B. matter. Bontcue was not at the station the night of the B.B. incident. The following day he had pulled up Ryan Madden's report on the B.B. search, and when he realized he was not there for the incident and could not properly review it, he put the report back in the review system. Bontcue was interviewed by Austino as part of the IA investigation, and according to Gelfand, Bontcue was given Madden's report by Austino and asked him to give his opinion whether or not he believed there was a lawful basis for a strip search to

occur. Gelfand testified that Bontcuc received discipline for this exchange but did not specify the kind of discipline he received and under what charge specifically.

Regarding the June 10, 2017, arrest of T.C. and the specifications of the charges against Austino state:

On June 10<sup>th</sup>, 2017, Captain Austino, while working on a street assignment, ordered the arrest of a citizen, Tyrell Cox, for disorderly conduct after Cox directed foul language towards police as they were attempting to clear an area. Reasonably perceiving that the order of arrest may have been misguided or even unlawful, then-Sergeant Gregory Pacitto, who was present for the arrest, filed a critical incident sheet outlining his concerns and prompting an internal affairs investigation. Lieutenant Christopher Landi, who was also present for the arrest and viewed footage of the arrest afterwards, shared in Pacitto's concerns. Despite the good-faith concerns raised by Pacitto and Landi, Austino was promptly exonerated without any interview. Pacitto's complaint was then converted into an investigation against Pacitto and Landi for improperly questioning Austino's authority and fabricating their complaints. In so doing, Pacitto and Landi were marked as having an internal affairs investigation on their respective records with Landi receiving a sustained charge for performance of duty, again sending a message throughout the agency that any such questioning would be met with consequences.

As for Gelfand's report, Gelfand states "I thus find this matter sustained as additional strong support for the PBA's general allegation of retaliation and differential treatment through perversion of the VPD IA process at the hands of Chief Beu, Captain Finley, and Sergeant Riordan. Under all of the circumstances I do not believe this matter would have been handled as it was to the VPD IA process if the disorderly conduct arrest was ordered by someone other than Austino, Beu, or Finley." Although his report does not specifically state that Austino played a part in this retaliation, he testified that he may have mentioned Austino retaliating as to the T.C. in another section of the report.

Gelfand acknowledged that Austino was not in IA at the time that Pacitto and Landi were investigated for this matter. Gelfand was uncertain whether he knew that T.C. had an active arrest warrant at the time of his arrest for disorderly conduct, but he testified

that fact "doesn't sound like it has any potential to effect the conclusions as to whether the arrest was lawful, [or] whether Pacitto's filing of the critical incident sheet is something that he should not have been subject to retaliation for." Gelfand acknowledged that contrary to the specifications of the charges against Austino, Pacitto was not present for T.C.'s arrest, but Landi was at the scene of the arrest.

Gelfand acknowledged that he did not include the fact that T.C. pled guilty to his disorderly conduct charge in his report. Gelfand did not think that Pacitto incorrectly informing Gelfand in his interview that T.C. pled guilty to a lesser offense affected Pacitto's credibility. Gelfand believes that because Austino filed a critical incident sheet against Pacitto and Landi seventeen days after Pacitto wrote a critical incident report against Austino for the T.C. arrest, that was evidence of retaliation.

**David Cavagnaro** testified on behalf of the respondent. He has been employed by VPD for seventeen years serving on the patrol division, the street crimes unit, and the detective unit. Cavagnaro has also served nearly a decade as the union's financial secretary, briefly as the vice president, and the president as of June 2017. His wife, Crystal Cavagnaro, is also a police officer for the VPD.

Cavagnaro testified that the MVR audio issue was concerning to him as a member of the executive team of the PBA because of the potential privacy concerns that the livestreaming function could present to members of the union. Cavagnaro became aware of the livestreaming when his wife Crystal informed him that the MVRs were live streaming audio. She became aware of this capability because at the time she was assigned to the operation support division of VPD. Pacitto, who was PBA president at the time, and Cavagnaro brought the issue to Chief Codispoti's attention, who immediately ordered that the live streaming function be shut off. Cavagnaro took exception to how the MVR issue was handled and believes that the confusion surrounding the live streaming could have been settled if the reasoning for the live stream to be activated was clearly communicated to the union. Subsequently, Pacitto and Cavagnaro worked together to draft a grievance (R-5) that alluded to Captain Austino delivering the order to turn the MVR that resulted in harassment and violation of the rights of union members, including interrogation of PBA members rather than an investigation into the unlawful order itself. The grievance also

raised the issue that PBA members felt threatened and concerned for whistleblowing. Cavagnaro identified the whistleblower for the MVR issue as his wife and stated that she was "bypassed" for the detective bureau by officers who were less qualified and her junior. Soon after the grievance was filed, Chief Codispoti retired and Beu was promoted to chief.

On January 4, 2017, Chief Beu responded to the grievance indicating that Austino's order to activate the microphones in all vehicles was rescinded on December 14, 2016. (R-6). This is the same date that Austino had ordered the audio to be turned on. Cavagnaro testified that this response from Beu was not enough to satisfy the PBA's concerns, as they had never gotten an explanation from the department's administration as to why the microphones were turned on, and that his wife still found that there were vehicles that had the live stream audio function turned on December 15. Cavagnaro acknowledges that there was an underlying issue going on with the MVRs and that the "fix" to get around the issue was to turn on the live stream function. However, he still believes that the PBA should have been informed by this decision and although it is important to have audio working under certain circumstances, it is improper to have live streaming on all the time. Despite being unhappy with Austino's response to the grievance, Pacitto and Cavagnaro did not proceed with the grievance to step two, which would be to bring the grievance to the public safety director. From 2016 to 2020 the public safety director was Edwin Alicea. Cavagnaro stated that they did not proceed to the next step of the grievance process because of the uncertainty with the MVR situation because at the time of Chief Beu's response the matter was being handled by the Cumberland County Prosecutor's Office and the PBA wanted to hear their feedback before proceeding.

Cavagnaro felt that Lieutenant Finley treated him differently after reporting his concerns with the MVR incident, including the ripple effect of other officers not wanting to work with Cavagnaro to avoid Finley being mean to Cavagnaro and it "rubbing off on them," and Finley intentionally short staffing Cavagnaro's shifts because of his PBA involvement. He alluded to his belief that the rest of the administration was involved in these decisions but could not point to any evidence that could prove it.

On June 14, 2017, Doug Long wrote a letter in response to Chief Beu's determination of the MVR grievance, stating "While [CCPO's] findings regarding criminal

activity were inconclusive, there's no doubt there was an invasion of privacy." (R-10.) The letter goes on to state that "because of the revelation regarding privacy and potential wiretapping issues a campaign of retaliation appears to be occurring and occurring most notably and more recently with investigations opened by the Internal Affairs Department regarding incidents dating back five years or more." Cavagnaro explained that one of those retroactive investigations pertained to Landi and Laboy who had made an arrest and search on the street crimes unit and were then overturned on appeal years later. As a result of the search being found invalid, an IA investigation was launched, and the PBA was upset because of how distant the arrest was when the investigation was opened. Ultimately, Landi and Laboy were exonerated in the IA investigation when the determination that the search was invalid was appealed and the court found that there was not a problem with the search.

In July 2017, Finley had a standing order that officers were to do all their reports in their vehicles, outside of the station. When officers were upset by this order, Cavagnaro and Lieutenant Triantos had a meeting with Finley who became irate and yelled that they should "put it on paper" if they were upset about the order. Cavagnaro explained that he was fearful of Finley after this moment because of his knowledge that he targeted other officers who had challenged his orders. Cavagnaro attributes this to Austino and the administration because they knew that Finley was upset with him.

Around the same time, Cavagnaro was removed from the street crimes unit. Cavagnaro testified that Austino told Sergeant Shaw that one of the considerations for his removal from the unit was the fact that he used union time and missed days of patrol. Soon after, Cavagnaro became president of the union, and the union became aware of a phone in the sergeant/lieutenant's office that was live streaming audio. Cavagnaro identified the whistleblower for the phone issue to be Sergeant Scott O'Neil but could not identify any adverse action that O'Neil suffered. This issue was brought to the attention of Lieutenant Finley, and Cavagnaro and the union had concerns about whether administrators were listening to union members routinely. After these incidents, and other incidents including Cavagnaro believing that other officers did not want to work shifts with him for fear of retaliation, and that his platoon was allegedly not allowed to eat in one of

the break rooms while the other platoon was, the PBA executive team met with their attorney Doug Long to compose the draft complaint for a lawsuit against the department.

On September 5, 2018, the PBA filed another grievance as a precursor to filing the complaint to try and remedy these issues. (R-118.) The grievance included claims that the National Labor Relations Act was violated by Chief Beu's standing order directing officers that were assigned to platoon two from drinking or eating while on the department premises, but this order did not apply to the other platoon. The grievance also highlighted derogatory treatment and hostile work environment by Captain Finley and the administration. Adam Austino responded to the grievance on September 14, 2017, in his capacity as acting chief when Chief Beu was away at the time (R-119). Austino's response to the eating and drinking limitation was that Chief Beu has the right to make reasonable limits on food and drink in appropriate locations within his management rights. Cavagnaro believes that this was not enforced uniformly between the two platoons and that although he did not witness this disparate treatment firsthand, that other officers told him that "things were completely different from one platoon to the other." With regard to the harassment and CEPA claims, Austino stated that these kinds of violations are serious and would not be tolerated but requested that the PBA provide examples to aid the administration in granting relief. Cavagnaro testified that at the direction of the PBA's attorney, Doug Long, they would not provide examples or proceed to step two of the grievance process and bring it to the attention of public safety director Alicea. Austino had also given the PBA the option to move to the next step in grievance process regarding the CEPA claims, but Cavagnaro stated that they did not go that route because they feared retaliation from Finley.

Cavagnaro feels as though he was treated differently by Austino because he was president of the PBA. He believes that he was removed from the street crimes unit because of his PBA involvement. Cavagnaro acknowledges that he was not the only officer removed from street crimes, and that at least ten other officers were moved off the unit and none of which were executives in the PBA.

Cavagnaro had filed several other grievances during his time at the head of the PBA. One grievance that was denied by both the chief and the director of public safety

pertained to an order requiring officers to write their reports in their cars rather than taking a trip back to headquarters to write them. In denying the grievance, the public safety director found that the order did not violate the collective bargaining agreement or the National Labor Relations Act. Another grievance pertained to the special event time used by PBA executive board members, which was denied by the chief. However, the director of public safety thought the practice was improper. After this determination, the matter was resolved by the union and the administration before it went to arbitration.

Cavagnaro was written up “three or four” times in June 2018 for his involvement in the escape of a prisoner from VPD’s custody. Cavagnaro was notified that he was the target of an IA investigation because he was the officer that arrested a prisoner who ultimately escaped from VPD. At the time of the escape, Cavagnaro was not at the facility but was at the hospital taking pictures of the victim of the incident leading to the arrest of the prisoner. Although he received the notification that he was the target of the investigation in June 2018, he was never interviewed. He stated that he thought that being investigated for this was related to the “other stuff” going on with Lieutenant Finley. He acknowledged on re-cross that it was logical that he was named as the target of an investigation for the escape of a prisoner that he arrested, as an escaped prisoner is an important issue for a police department. He also acknowledged that after the investigators found out that he was not at VPD at the time of the escape there was no need to further investigate him.

The other write-ups, or notices of IA investigations into him, were a citizen’s complaint that was not sustained and an investigation for his body camera not being on when it was supposed to be. For the body camera issue, he was counseled but did not have any serious discipline levied against him. He acknowledged that the department reviews BWC footage at random and when a camera is off when it should be, an IA investigation will be conducted, not as a result of any kind of retaliation related to PBA affairs. Another instance of an investigation against Cavagnaro was for “abuse of time” when he responded to the hospital to check on Officer Selby after he suffered severe injuries in an accident. Chief Codispoti reviewed the matter after the IA investigation and determined that it was reasonable for Cavagnaro to respond to the hospital to check on the well-being of a fellow officer.

In the summer 2018, there was an officer-involved shooting incident. Officer-involved shooting incidents automatically trigger investigations by either the county prosecutor's office or the AG's Shooting Response Team. The incident occurred on what Cavagnaro recalled being an extremely hot day, and that all reporting officers were at the scene of the shooting from about noon to five o'clock in the afternoon, with many of the reporting officers having started their shifts at six in the morning that same day. When the officers returned from the scene, an investigation was quickly triggered by CCPO, who wanted compelled statements that very day. Cavagnaro recalls that the PBA was concerned whether officers would be able to have legal representation while being questioned. When officers were required to provide statements that day, Cavagnaro was upset that seemingly no one was concerned for the well-being of the officers who were exhausted from heat and stress. Cavagnaro was not aware that Captain Austino had argued with the prosecutor's office on behalf of the officers involved asking that CCPO stand down and allow officers to go home and take their interviews the following day and said that he commended him for that action. No one from VPD conducted interviews until CCPO determined that Officer Scarpa (formerly the VP of the PBA and at the time a member of the Superior Officers' Association) was insubordinate for not completing his interview that day, and then an IA investigation was ordered. Cavagnaro acknowledged that no part of the officer-involved shooting matter had anything to do with Scarpa's union involvement because the CCPO ordered the investigation, not anyone from the VPD administration.

On re-direct examination, Cavagnaro spoke at length about the allegations of harassment and derogatory treatment fostered by "Captain Finley and administration." He detailed instances where Finley had made it clear that he would work hard to have certain officers fired for certain perceived slights against Finley. Cavagnaro testified that at one point when Finley was in Internal Affairs Finley said that "...when I have a chance I'm going to f--k Rich Burke," because Burke had filed a complaint against Finley for taking his work car to Ocean City. Burke was never fired or demoted despite that statement from Finley.



Cavagnaro also believes that he was singled out by Finley, who instructed him to not write reports in the DWI testing room. Cavagnaro stated that he preferred to work in that room because it was quiet. He acknowledged that he was allowed to file reports in other offices in headquarters at the time. The grievance that he filed as to this matter was denied by the Chief and he did not take the matter to the public safety director. He testifies that he received verbal counseling that is not on record anywhere.

**Christopher Landi** testified on behalf of the respondent. He has been employed by the VPD for twenty-five years and has served the majority of his career as a member of the patrol division. Around 2009, he began a nearly four-year period supervising the street crimes unit. After his promotion to sergeant in 2006, he was again promoted to lieutenant in 2017 and still holds the title today. He was assigned to Internal Affairs in September 2019.

On the night of June 10, 2017, Landi was a patrol sergeant who responded to the scene of the T.C. arrest when he had heard the incident developing over his radio. Upon arrival at the scene, Landi had a conversation with Officer Selby and what appeared to be T. C.'s friend, which was recorded by his body camera and entered into evidence. (R-20.) The video also includes Landi's conversation with Captain Austino, which details that the initial call that triggered police intervention was due to an individual with a knife causing an altercation with T.C. The man with the knife was arrested separately. Austino explained that T.C. had "squared up" toward the officers.

In the days following this incident, Landi was approached by Sergeant Pacitto who inquired whether T.C.'s behavior, including cursing at officers, was enough to amount to a charge of disorderly conduct. Landi testifies that it surprised him that simply cursing at police officers was the basis for an arrest, and T.C.'s actions did not rise to the level of disorderly conduct. He also stated that he believed that the description of the events given by Captain Austino was not accurate. He believes that although T.C. pleaded guilty to the charges it does not change the fact that the foundation for the arrest was not solid.

In November 2017 Landi was called for a witness interview with Captain Finley regarding T.C.'s arrest. He was never notified that he was a target in any investigation

involving the matter. He was questioned whether he had seen Sgt. Pacitto's critical incident report, which he had not, but when reviewing it Landi had stated that he thought it was accurate. During the interview, Landi noted that Finley seemed to think that the disorderly conduct charge was justified. He felt that at times during the interview he "had to defend [himself]." Landi acknowledged that Pacitto's filing of the critical incident report about an officer charging the wrong offense is a rare occurrence, and that typically an officer would have an obligation to go to their supervisor to complain about receiving an illegal order and that at the time of the arrest, no officer at the scene objected to putting T.C. under arrest.

In May 2018, the head of IA, Tom Riordan, called Landi into his office. Landi was then informed that there were collateral issues from the T.C. investigation that were identified pertaining to Landi, and he was going to have a charge sustained against him for failing to supervise. Riordan had informed Landi that he was being counseled. Shocked by this exchange, Landi passed Chief Beu, who then called him into a conference room. When Landi explained to the Chief that he was upset, Beu explained that the collateral issues were enough to warrant "a spanking." After this conversation, Landi received an email from Riordan, recapping their discussion, but at no point was Landi informed that any IA investigation against him had been administratively closed. He explained that "administratively closing" an IA investigation would happen when an investigation cannot be completed or doesn't need to be completed and that there is not enough information at the time to reach a disposition. As a result, the chief would determine the matter to be administratively closed. Counseling is the lowest possible form of punishment after an IA investigation. When questioned about Austino's involvement in this IA investigation, Landi acknowledged that Austino was not in IA at the time and had no oversight into the unit at the time of the investigation.

Despite consistently informing Chief Beu that he had no interest in joining Internal Affairs, Landi was transferred to IA in September 2019. He explained that as early as May 2019, Beu had approached him and asked if he would be interested in working in IA. Landi responded that he did not, but stated that Beu would continually ask if he would want to be in IA, to which he would always say no. Landi explained that he was upset by this decision because he enjoys working in the field but acknowledged that Beu likely

thought he was qualified for the job and that it is a very important job in the police department. Despite acknowledging the importance of the position, Landi states that "it could be viewed" that being put in IA was retaliatory. When Landi joined the IA unit, he reviewed files including the reports involving the T.C. matter. Landi reported being shocked by the report because it read to him like an "attack" on his character and competence. (R-41.) He was concerned with how the matter was "administratively closed" because there was still a disciplinary disposition that he was to receive counseling, which he states is inconsistent with IA reports that have been administratively closed. Although he has suffered no financial damages for his involvement in the T.C. matter, he believes that he could still suffer adverse employment actions if he were to transfer to another police department and they were to review his file and see that he was counseled for "untruthfulness." Although the file says it is administratively closed, it is not administratively closed because there is a disposition as it pertains to him.

**Adam Shaw** testified on behalf of the respondent. He has been employed by VPD since 2006 and has had multiple year-long stints with the street crimes unit, and several other stints on patrol, the narcotics unit, and as a member of the canine unit. He was promoted to sergeant in 2011 and is currently an active lieutenant that serves on the street crimes unit.

Shaw detailed the composition of the street crimes unit in 2016. This was during his second stint with the unit, which now comprised of three units, which included one on each platoon, and the third flex unit that would split days between the other two. Street crimes would handle drug dealing and gang "stuff," largely that could be found in apartment complexes. Each individual unit would be comprised of three to four officers. In June 2016 the new patrol captain for the street crimes unit was Captain Austino. Shaw explained that when Austino took over the flex unit was absorbed by the other two units, and the entirety of the unit's tasks were minimized, and instead of practices they were used to, were relegated to sitting in high presence areas and monitoring activity. Under Austino, the members of the unit were required to send a weekly email detailing all their activity for the week.

On June 8, 2016, Shaw was notified that he was being removed from the street crimes unit and assigned to day shift. This order was given by Captain Austino. After a phone discussion with Austino, the order was rescinded, and Shaw stayed on the unit for the remainder of the year. One of the reasons that Austino had given for the order was that Shaw was then training to have a canine and was away two days a month to go to that training. In September of 2016, Shaw had asked Austino for permission to get search warrants on two houses in an area that the unit had targeted for months. This request was approved. The warrants were then executed on December 14, 2016. In November, Shaw had prepared an excel file with data about the impact of the unit, with statistics attributable to each individual officer. (R-141.)

In January 2017, there was an order issued (R-142) that transferred all the officers in the street crimes unit out of the unit. Shaw attempted to advocate on behalf of Officer Day that he should have stayed on the unit because of his knowledge and experience in that area, and that his removal would be a disservice to the department and the city. Regarding Officer David Cavagnaro's removal, despite Shaw advocating for him to stay on the unit, Austino raised concerns about his PBA involvement and that he missed too much time. (R-140, an email from Austino with a list of questions regarding Cavagnaro's use of PBA time.) Shaw did acknowledge that the decision to alter the unit came down from the chief, and that Cavagnaro's time off for PBA duties created a scheduling and overtime issue for the unit. According to Shaw's conversation with Austino, the entire unit was transferred out except for Officer Connelly, who was kept on so the unit would continue to have a woman for diversity purposes. On re-direct he was unable to clearly remember Austino's statement on the diversity issue. Officers Marchesano, Madden, Ortiz, and Carini were all transferred from the unit. As it pertained to Shaw, he explained that Austino had met with Captain Beu, Captain Laria, and Sergeant Bontcue about whether Shaw would be returning to canine school. Bontcue informed Shaw of this meeting and asked him if he wanted canine or street crimes, and Shaw indicated that he chose canine despite knowing he would not be able to serve on street crimes if that was the path he chose.

Regarding the MVR issue, which arose on December 14, 2016, (the same day as the execution of the street crimes search warrants that Shaw had advocated for), Officer Crystal Cavagnaro informed Shaw that she learned that the MVR cameras in the police

cars had been activated to enable live streaming. After learning this, Shaw went to Sergeant Armstrong about the issue, and they tested the live streaming function on Shaw's car and were able to hear his car radio and the canine moving around in the back of the car. He then informed Chief Beu, who said he would investigate the matter. That afternoon, Captain Cardana sent an email (R-143) to all officers directing all officers with a patrol vehicle to utilize a mic pack and follow department policy associated with the operation of the MVR. Shaw was surprised at the timing of the order, and that he was worried that anyone could be listening into his car at any time.

In January 2017 he was transferred back to his preferred shift of 3:30 PM to 2:15 AM. He continued to have the same vehicle with his canine. In August 2017, Shaw emailed Sergeant Fulcher (R-145) addressing issues with his vehicle, including that his MVR had not yet been removed when other patrol cars had already had them removed. After the MVR/wire-tapping investigation was remanded back to VPD in April 2017, Shaw began receiving various internal affairs complaints that were generated from in-house. While in-house complaints were not uncommon, he noted that the complaints he was beginning to receive were exclusively from in-house, and the number of which was shocking when only six internal affairs complaints were processed, with most of them coming from citizens.

On May 16, 2017, Shaw received a notification from Tom Riordan regarding a complaint involving "other rule violations specifically a suppression issue which occurred on or about March 8<sup>th</sup>". (R-144.) On the date in question, Shaw stopped a suspicious vehicle in a high-problem area apartment complex for having a faulty brake light. The driver stated that they owned a pizza place and were delivering a job application to one of the tenants at the apartment complex but could not provide any detail about the apartments or who they were delivering to. Despite what Shaw thought was suspicious behavior, he let the driver go, even after he had offered to let Officer Shaw search the car. The driver indicated that he was driving back to Newfield, which would have been a northbound trip from the apartment complex. After this exchange, Shaw spoke with Officer Justin Selby, who thought that Shaw may have been interrupting a drug deal. Shaw then saw the same vehicle coming back to the apartment complex and observed the driver meeting with a male subject for about ten minutes and then got back in the car

to leave. Shaw then stopped the vehicle and asked him to step out of the car, and then had the canine sniff around the vehicle, which yielded the discovery of a broken-up crack pipe and small pieces of white rock. Officer Triantos, who reviewed Shaw's report on the incident, believed that there may not have been reasonable suspicion to stop the vehicle. When discussing the matter with Sergeant Candelario in his office, Captain Austino had entered the office and determined that there may not be enough for reasonable suspicion. On cross examination, Shaw acknowledged that Austino had called the situation a "close call" and told IA to "let it slide," and that Austino did not work in IA at the time, nor did he participate in the investigation. Shaw was "retrained" but suffered no suspension or demotion for this incident.

Around May 1, Shaw received notification from Lieutenant Casiano that he was assigned an internal affairs investigation into an April 17, 2017, street crimes car stop that Shaw had assisted in. During the stop, the canine was not needed, but Shaw had used a field cocaine test wipe to test a white rock substance that was found on the floor of a car. For this investigation, Shaw received a one-day suspension that was sustained and substantiated. He lost on appeal and the suspension was upheld.

Shaw was also involved in an investigation relevant to the T.C. arrest on June 10, 2017. Shaw was reviewing body cam footage with Sergeant Landi and Sergeant Pacitto. Shaw explained that he thought the interaction with T.C. was very regular and should not have amounted to an arrest for disorderly conduct. He was never informed that Captain Finley was reviewing his involvement in the matter or that Finley had sustained charges against him in reference to providing false information on the matter. Shaw admitted when he made comments on the matter, he had only seen one camera angle where T.C. had said "f--k you, you bitch ass cops," and not the communication between Landi and T.C.'s friend telling them to leave nearly ten times to deescalate the situation and refused.

Shaw states that after he began to have these investigations against him, his productivity at work dropped off to lay low and avoid the target that he presumed was on his back. He was never terminated or served with a major suspension. Shaw did not indicate who he thought from the administration was "coming after him." He did indicate

that he thought that Austino's micro-manager personality made his job more difficult. Ultimately, he was promoted after Riordan and Beu were fired.

In October 2017, Shaw attended a case law review training instructed by Captain Austino. During the training, Shaw questioned the VPD policy of opening an IA investigation automatically whenever a case gets suppressed, because it may be unfair to new officers who have less experience, and it may harm their morale. The following day, Shaw was approached by Lieutenant Triantos who informed him that he was speaking disparagingly about Captain Austino and discussing open IA investigations.

Around October 19, 2017, Shaw was attending a training for new body cameras, and after researching the remote activation capabilities of the cameras, had asked during the training whether anyone could remotely activate the cameras and see where an officer was or what they were up to while on the job. The following week, Lieutenant Wolf pulled Shaw into a private room and informed him that he was instructed to talk to him for making disparaging remarks about the department to outside sources and that it was problematic. He was informed that he was not being written up for it but was supposed to be talked to about it.

**Leonard Wolf** testified on behalf of the respondent. He was hired by the VPD in 1995. After beginning his career in the patrol division, he joined the Detective bureau for ten years, then spent five years in IA. He was promoted to Lieutenant in 2017 and has worked on a variety of assignments since then.

In 2015, Wolf was involved in a discussion with Lieutenant Austino, Lieutenant Finley, and Captain Beu, who all expressed concern with the 'Soda Fund' that was maintained by the department. Although Wolf was in IA at the time, none of the officers present at the discussion instructed him to conduct an investigation. During the discussion, Lieutenant Finley went on a "rant" about the current chief, and because of the insubordinate nature of those remarks, Wolf told Chief Codispoti about them. Captain Beu then performed an investigation into the matter, and Wolf completed a report as well. The IA file was entered into evidence as R-32. After Wolf's report was completed in August 2015, Chief Codispoti urged that the city audit the account, as the audit was being

conducted, the prosecutor's office was notified and looked into the matter as well. Prior to his testimony, Wolf had seen a report authored by Tom Riordan regarding Wolf's ethics in handling this situation that was "filled with lies, unsubstantiated claims and it goes in great detail about how [Wolf] was negligent in [his] duties as an internal affairs investigator and goes on for pages and pages of just fabrication." The report includes claims that Wolf failed to accept the internal affairs complaint for the Soda Fund matter, informed targets of the preliminary investigation, and then attempted to cover up the account by retrieving a box of evidence and authoring a questionable internal affairs report. Wolf refutes all of these claims and explained that he was never interviewed by Riordan as a target of this investigation.

The Community Policing Fund was a separate fund maintained by the Community Policing Unit. An issue arose regarding this fund when an officer had drawn funds from the account for personal use, which Wolf testified was for a mortgage payment. When Wolf brought this to Chief Codispoti's attention, the chief advised that it was a clerical error, and that the money was back in the account. Later that day, the prosecutor's office arrived at VPD with a subpoena for any kind of banking records related to the Community Policing Fund and an investigation began. One day in August or September 2017, Wolf was called into the office and Chief Beu, Thomas Riordan, and Lieutenant Triantos were present. Wolf was informed that he had been found to be negligent in "a variety of matters" regarding the Community Policing Fund, and he was presented with a PNDA and was to serve a major suspension of six or more days. According to Wolf, the officers in the room "threatened" him to take the discipline without a fight because the city was upset about the matter and that by accepting the punishment it would help assuage the situation. After some negotiation, Wolf was able to reduce the discipline to a non-major suspension without the negligence charges and a revised document was drafted and then signed by Wolf. After serving this suspension, Wolf was transferred out of IA in October 2017. Wolf was alarmed by this transfer because he had several investigations that were still open. Wolf acknowledged that Captain Austino was not a part of the Community Policing investigation, or the report issued by Riordan against Wolf, or the discipline given to Wolf.



Regarding the MVR system, Wolf had a discussion with Captain Austino about the MVR audio issues, where both Austino and Wolf expressed their frustration with the system hampering the ability to conduct investigations where sound would normally be available. As a result, Austino informed Wolf that he was going to have the mics turned on and instructed Wolf to contact Sergeant Fulcher and have him begin the process of turning the mics on in all patrol vehicles. During his interview with the Cumberland County Prosecutor's Office on January 4, 2017 (entered into evidence as P-25), Wolf clearly explained that there was no wiretapping going on with the MVR issue. In the interview, Wolf explained that he himself was frustrated by the "silent movie" video clips that he had to review in IA that were making it more difficult to investigate events that were recorded without audio. This statement reinforced his testimony that Austino ordered the live streaming function to be turned on, but he made clear in the interview that the purpose of the order was to get recordings, and the intent was never to listen to live conversation. Although the "nature of the system" permitted officers to click onto the live feed of patrol cars, Wolf had never heard of anyone using the system for that function. Wolf admitted that they could have communicated the reasoning behind why the mics were turned on more clearly to the department, but there was "no malicious intent here . . . nobody was sitting in a dark room listening to people's conversations." Rather, Wolf and Austino "were trying to get an MVR system that the taxpayers of Vineland had spent a considerable amount of money on to work as it was intended by the manufacturer and as we were hoping it would work for us to create an audio and video record of police officers performing their duties." As to Austino, Wolf stated in the interview that "He is a very ethical and credible person. I would not believe he would [turn on the audio] intentionally to try and gain something. That's completely out of character for him."

After his discipline for the Community Policing Fund and his transfer out of internal affairs, Wolf found that he was frequently targeted for minor IA investigations for things like not properly filling out forms in his reports as a patrol lieutenant. He stated that he did not take legal action on this perceived retaliation because he likes to persevere through tough times and hoped the situation would resolve itself. Wolf acknowledged that although he was not given an explanation for his removal from IA, that there is nothing in the collective bargaining agreement that requires an explanation when the chief of police orders a transfer.

Wolf testified that as a member of IA, he had never handled a matter where an officer reported that another officer had charged a member of the public inappropriately.

Regarding the B.B. issue, Wolf was in IA at the time and worked on it with Captain Austino who was also in the department. Wolf explained that the two members of IA would typically work collaboratively in their investigations. The investigation pertained to a search of B.B.'s person, and whether there was an impermissible strip search or body cavity search. After some initial fact-finding, the matter was sent to the Prosecutor's Office for a review and was then sent back to VPD after the CCPO declined to pursue criminal prosecution against any of the involved officers. The disposition of the CCPO's July 20, 2016, letter remanding the matter back to VPD (R-125) determined that it was a body cavity search that was done at VPD and was in direct violation of the AG Search Requirements. When recalling the B.B. investigation, Wolf stated that his impression of Lieutenant Casiano was that he was wary of the investigation and his statements were cautious. Wolf had stated in his report (also a part of R-125) that there was poor decision making demonstrated in the matter and that the officers being interviewed seemed to have been trying to protect themselves from consequences.

Wolf's report states that Sergeant Ruberti had said that he described to Lieutenant Casiano that B.B. pulled his pants down and had a bag between his butt cheeks. This was not what Casiano had reported to Wolf in his interview. On February 17, 2017, Wolf, Michael Benson, Chief Beu, Tom Riordan, and Austino had a meeting to discuss what the officers involved were going to be charged with. Wolf does not recall having a conversation about whether Casiano should be charged with untruthfulness, or that Chief Beu had indicated that he believed Casiano should be charged with untruthfulness. Casiano was disciplined by PNDA on March 10, 2017. Ultimately, Wolf testified that untruthfulness was a topic in the investigation, and that the stories of the officers involved varied, but he did not charge Casiano with untruthfulness in his PNDA. Ruberti had given an account that the bag of drugs was visible between B.B.'s butt cheeks, but Casiano had described a visible bag that could be seen sticking out of B.B.'s boxers, "much below his waist." Wolf acknowledged that the location described by Casiano is significantly different than the accounts of Officer Ruberti and Officer Madden. As to Casiano, Wolf testified

that there was no finding that Casiano ordered a strip search or a body cavity search, and instead B.B. took the drugs out of his anal cavity in the bathroom of his own volition.

Austino had written a report separate from Wolf's on the B.B. matter, which Wolf explained that Austino "planned to go into more detail." The report included details from Casiano's interview first, despite not being the arresting officer in the matter. There was nothing in Austino's report that indicated that Casiano was untruthful as to the primary issues of the investigation.

As it pertained to the CCTV footage of Ruberti and Casiano, Wolf testified that there was no way that anyone could go back and look at that hallway conversation and have audio. In Austino's separate report on the B.B. matter, he reported that Casiano indicated that he was not told that B.B. "spread his butt," but Austino included a footnote that stated, "This is inconsistent with video evidence." Wolf acknowledged on cross-examination that in the video of Madden's conversation with Casiano, that Madden was gesturing to his rear in imitation of B.B.

Officer Madden was disciplined for his report of the B.B. matter. He indicated in his report that "I spoke to the station house commander, Lt. Casiano, as well as the patrol shift sergeant, Sgt. Ruberti, and advised them of the situation, as well as all of the information that I had received regarding where B.B. conceals his CDS," and that ultimately, "Lt. Casiano approved the strip search of B.B." According to Wolf, Madden was told to put that Casiano ordered the strip search in the report by Sergeant Carini. When he was interviewed by IA, he admitted that part of the report was not a correct statement.

As to Austino's handling of matters of untruthfulness, Wolf believes that Austino would take a hard line when it came to untruthfulness, and that he took what appeared to be personal offense when someone was not completely open and honest with him about what he was inquiring about.

**Jennifer Webb-McRae** testified on behalf of the appellant. She has been the Cumberland County Prosecutor since 2010. She was appointed by Governor Corzine

and re-appointed by Governors Christie and Murphy. Her job as prosecutor is to oversee the prosecution of all indictable crimes in the county. She is also charged with ensuring that the Attorney General directives and guidelines are carried out in Cumberland County in a manner that meets the county's needs. She is the ultimate arbitrator of whether the AG guidelines are followed properly and of IA functions within Cumberland County.

The CCPO has the ability to take over a police department or any function in the department. In Webb-McRae's time at CCPO, they have taken over both Millville and Vineland's police departments. In early 2020, the CCPO had taken over the VPD IA unit and Chief Richard Necelis was appointed as the officer in charge. He had been stationed there because the CCPO had found that there were issues with how the VPD IA unit had been conducting its investigations. Necelis was a former state police captain who was also the executive officer of IA for the state police. On November 17, 2020, Webb-McRae sent a closeout letter to then-acting Chief Pedro Casiano informing them that the IA function was then being turned back over to the department.

The CCPO had received a complaint from Richard Tonetta claiming that Adam Austino had improperly disclosed confidential information. The official position of the CCPO as to that claim was communicated to Michael Benson by Harold Shapiro, who is Webb-McRae's first assistant, in a July 27, 2020, letter. (P-23.) This letter, which Webb-McRae agreed to the contents of and was copied on, states that the office determined that Austino was exonerated from these claims. Webb-McRae confirmed while reviewing this letter that the CCPO is the exclusive authority that determines when there are violations of the IAPP.

In 2021, Webb-McRae learned from Colin Bell that Austino, Beu, and Riordan were being charged with disciplinary action and that there was soon going to be a draft PNDA issued against the three VPD command staff members. On November 11, 2021, Webb-McRae responded to Mr. Bell in an email explaining that she would be consulting with the AG's office to confirm whether her office would need to investigate the matter. (P-18.) She then consulted with Richrd Burke of the Office of Public Integrity, who informed her on November 12, 2021, that the county prosecutor, along with the AG, has the exclusive authority to oversee the IA function of the law enforcement agencies within its jurisdiction, including the obligation to ensure that the IA units within the county are operating

professionally, effectively, and in conformance with the IAPP. After confirming this, Webb-McRae communicated to Mr. Bell, Mr. Benson, and her staff that she wished for VPD to stand down and wait until they discussed the matter with her on November 15, 2021, before proceeding. Mr. Benson responded that the meeting scheduled as to Austino, Beu, and Riordan was a Loudermill hearing to afford the officers an opportunity to state the facts they might want the city to consider, and Webb-McRae contended that she did not interpret the meeting to be a Loudermill hearing because she had only heard that there was a draft PNDA rather than a formal PNDA. Despite this, and her order to stand down, VPD proceeded, even when she communicated to Benson that the officers could not be summoned to answer questions related to their decisions or actions that related to the internal affairs function.

The CCPO decided to conduct an internal affairs investigation into Austino, Beu, and Riordan. This investigation began with Sergeant Ray Cavagnaro of the CCPO reviewing the findings of IAPP violations contained in the Gelfand Report and then reviewing random IA investigations done by the department from 2014 to 2020. Webb-McRae stated that she was interested in determining whether the faulty IA process at VPD was a systemic issue across multiple chiefs or had been confined to Chief Beu's administration. Upon reviewing Cavagnaro's report, Webb-McRae testified that there were deficiencies that occurred over the tenure of various chiefs.

On July 29, 2022, Webb-McRae sent a letter to William Cook, Christopher St. John, Colin Bell, and Katherine Hartman informing them that the CCPO had completed its investigation and that they were going to release Cavagnaro's report to them. (P-26.) On the back of P-26 was another letter dated November 29, 2021, from Shapiro to Michael Benson, which copied Webb-McRae, Richard Burke, Katherine Hartman, Colin Bell, and Christopher St. John that reiterated CCPO's position that they had the sole authority to conduct investigations into IA functions and requesting the Gelfand Report. Ultimately, CCPO did not receive the report from VPD but instead received a copy from Colin Bell.

**Raymond J. Cavagnaro** testified on behalf of the appellant. He is a lieutenant in charge of the Major Crimes and High-Tech Crimes Unit at the CCPO. Prior to joining

CCPO, Cavagnaro was a police officer in the Borough of Buena from 1996 to 1998, and then worked for VPD from 1999 to 2007. Cavagnaro acknowledged that he worked with Austino when he was at VPD. Cavagnaro has been at CCPO since 2007. Prior to his promotion to lieutenant, he was a sergeant in the Professional Standards Unit, and has also worked as a detective in the Organized Crime Bureau and the Trial Unit.

The Professional Standards Unit is the internal affairs unit of the prosecutor's office. The unit conducts internal affairs investigations for employees of the prosecutor's office and conducts investigations for any criminality against officers in local departments and prisons, including the county jail. Typically, under the IAPP guidelines, the Professional Standards Unit would be tasked with conducting investigations into the chief and any member of his executive staff.

Prosecutor Jennifer Webb-McRae instructed Cavagnaro to conduct an IA investigation of Adam Austino, Rudy Beu, and Thomas Riordan as there were alleged violations of the IA policies and procedures. Cavagnaro was instructed to review the Gelfand report and ascertain whether those violations had in fact occurred. Once Webb-McRae obtained a copy of the Gelfand Report, Cavagnaro reviewed Gelfand's findings as they pertained to potential IAPP violations. Cavagnaro was then instructed to conduct a random review of VPD IA investigations from 2014 up to 2020.

Cavagnaro's report (P-19) concludes:

"This investigation revealed violations of the Internal Affairs Policy and Procedures occurred during the tenure of Chief Codispoti and Chief Beu. Such violations ranged from minor deviations to failing to conduct investigations into allegations of police misconduct. As outlined above, such deviations and failures can be attributed to numerous members of the Vineland Police Department under the administration of both of the aforementioned Chiefs of Police.

Lieutenant Landi advised that Chief Codispoti retired in December 2016 and Captain Beu was promoted to Chief in January of 2017. Lt. Landi also provided the following dates of personnel assigned to the Vineland Police Department, Internal Affairs Unit. Captain L. Bowers was assigned to IA from July 2008 through December 2015. Lt. L. Wolf [w]as

assigned to IA from 2012 through October of 2017. Captain A. Austino was assigned to IA from January 2016 through June 2016. Captain M. Finley was assigned from June 2016 through January 2017. Captain S. Triantos was assigned to IA from October 2017 through February 2018. Lt. T. Riordan was assigned to IA from January 2017 through December 2019. Sgt. Candelario was assigned to IA in February 2018 and is currently assigned. Lt. Landi was assigned to IA in January 2020 and is currently assigned. Sgt. P. Darrigo was assigned to IA in January 2020 through December 2020 and Sgt. D. Ferrari was assigned to IA in November 2020 and is also currently assigned.

As indicated, this investigation was not intended to opine to the objectivity or motivation of the investigative techniques or lack thereof, rather to ascertain if violations of the IAPP were routinely committed.

Following Chief Necelis' role as Officer in Charge, deficiencies he identified were corrected which provided guidance to current assigned Vineland Police Department personnel. Additionally, routine random reviews of Vineland Police Internal Affairs Investigations were and continue to be conducted which revealed Vineland Police Department Internal Affairs Unit is in compliance with 2021 IAPP.

As set forth in detail above, certain allegations relating to violations of the IAPP, identified in the Gelfand Report, were confirmed and other allegations were not confirmed. Additionally, the CCPO undertook a random review of Vineland Police Department Internal Affairs investigation files from 2014 through March 2020, which files were not identified in the Gelfand Report. After the review, and as set forth above, certain Internal Affairs investigations were handled in conformity to the 2014 IAPP and others were not. Said violations set forth in detail above, identified in the Gelfand Report and the CCPO random review, occurred during the tenure of both Chief Codispoti and Chief Beu, as well as multiple VPD Personnel assigned to the Internal Affairs Unit."

The random review conducted by Cavagnaro included thirty-six cases that were not mentioned in the Gelfand Report. He was instructed to review "four to six" cases per year from 2014 through 2020 by First Assistant Prosecutor Shapiro but was not given any criteria to determine how many he should select in any given year. The report included review of five files from 2014, four from 2015, seven from 2016, six in 2017, six in 2018, six in 2019, and two in 2020 because Chief Necelis took over the IA department in 2020.

Cavagnaro acknowledged that he did not have a method to select truly random cases (i.e. random number generator) but maintains that he selected cases at random with no agenda or purpose other than completing his assignment and evaluating VPD's IA practices.

Cavagnaro's review of Gelfand's Report necessitated examination of the Soda Fund, MVR, B.B. and T.C. IA files. As to the soda/flower fund, Cavagnaro stated that the fund began as a collection of the funds that came from the utilization of a soda machine within the police department, but also incorporated the profits from the sale of brass bullet casings from the firing range. Cavagnaro testified that Austino alerted Finley to the fact that he had issued an order to stop the sale of the brass, and that when he returned from leave, he learned that the brass had been sold. Finley and Austino met with then acting-Chief Beu, and Lieutenant Wolf was also a participant in the meeting. When they discovered a log that demonstrated that hotel accommodations were paid for by the soda fund, Beu instructed Wolf to investigate. Gelfand found in his report that when Finley, Austino, and Beu confronted Chief Codispoti about their investigation into the fund that they violated the IAPP by informing the target of the investigation.

Cavagnaro testified that based on his experience it would be proper for members of a police department to "get [their] ducks in a row before [they] call the prosecutor's office for criminality" and found that there was nothing that could be attributed to Austino as a violation of the IAPP in the soda fund matter. Cavagnaro also made clear that the soda fund and the community policing fund were two distinct issues. Cavagnaro did not find it concerning that Lieutenant Wolf was not interviewed in reference to the soda fund or the community policing fund. However, he found there was a violation in the soda fund IA investigation because the investigation was not properly documented, including the absence of a target letter to Wolf informing him that he was a collateral target in the investigation.

Regarding the MVR investigation, Cavagnaro did not find any violation of the IAPP that was attributable to Austino. Gelfand wrote that the fact that Austino was not interviewed was a violation of the IAPP, to which Cavagnaro stated "while it is a crucial stage it does not have to occur...you don't have to interview the target officer if it's not



necessary.” Cavagnaro did acknowledge that an interview of Austino would assist in determining the reason for the activation.

Cavagnaro testified that there were multiple IAPP violations in the B.B. matter. Although Gelfand found that the questioning of Sergeant Bontcue conducted by Austino was not directly related to the matter under investigation within the meaning of the IAPP, Cavagnaro found that “based on violations of the IAPP, I determined that the questioning could have been regarding past practice into personnel. It’s not uncommon to propose hypothetical questions to get to understand the inner workings of a unit. However, this may or may not be a violation depending on what the intent of the interview was.” Cavagnaro acknowledged that both Austino and Wolf prepared reports, but that the part of Wolf’s report that reviewed Roberti’s competence violated the IAPP because Roberti’s interview was not in the IA report. Cavagnaro agreed with Gelfand that if Casiano were to be considered for a charge of untruthfulness, then he should have been given a target notification and re-interviewed to discuss the video evidence. He explained that this determination depends on the timing of when Casiano’s untruthfulness was determined to be a collateral issue. He stated that if the investigation was at its conclusion when the issue was identified that the investigator would just report a finding rather than inform the target. Ultimately, he believes that if inconsistencies were identified by the station house commander, then Casiano should have been investigated.

Regarding the T.C. IA investigation, Cavagnaro acknowledged that there were IAPP violations, but none were by Captain Austino. The violations were committed by Finley and Riordan for how they handled the IA investigation. He found that there were IAPP violations because Pacitto, Landi, and Shaw were identified as collateral issues and should have been notified but no such notification occurred. Cavagnaro testified that although there were IAPP violations, the point of his investigation was not to opine as to the objectivity or reasoning behind the actions of Finley or Riordan. Cavagnaro also acknowledged that Chief Beu ordering the charges to be administratively closed was a violation of the IAPP, and that he advised the prosecutor to contact Vineland and take corrective action. He stated that this is a job for Jennifer Webb-McRae, but she had not gotten to it at the time that he testified.

**Adam Austino**, testified on his own behalf. He was hired by VPD in May 2001. He was promoted to sergeant in 2005, lieutenant in 2009, and captain in June 2016. As captain, Austino served in all four captain positions. He began in 2016 as the patrol captain, then became services captain in 2017 and oversaw radios, training, and communication in the department, and from 2018 to 2021 served as the executive training or records captain, overseeing police records, storage, and training. Prior to his removal in 2021, Austino briefly served as the criminal division captain, overseeing the detective bureau, and crime scene and narcotics units.

As captain, Austino served as Acting Chief approximately fifteen times. The length of each stint as acting chief varied and was dependent on the length of time that the then-current chief was taking off for vacation. Austino acknowledged that he sometimes addressed grievance issues as acting chief because the grievance process was time sensitive, and some deadlines had to be met before the return of the chief at the time.

As a captain, he would meet frequently with the command staff. These meetings would include the chief, the deputy chief if there was one at the time, the captains, IA unit, and shift lieutenant. In 2017, this included Chief Beu, Captain Loria, Captain Finley, Austino, Leonard Wolf, Dave Cardana, Lanay Bowers, Steve Triantos, Tom Riordan, and Sergeant Candelario when he moved into IA.

In 2016, as patrol captain, Austino had to participate in the annual department realignment. During this process, a personnel order is submitted from the administration (R-142) after officers bid for different shifts based on seniority. The order was signed by Austino because he was the patrol captain, and Chief Codispoti instructed him to do it. The process of drafting the order is collaborative with the chief and requires various revisions and drafts as much of the department's schedule is being shifted at once. This personnel order included the phasing out of the street crimes unit. This phase out was decided by management at the time and they had planned that five to seven officers were likely to be shuffled out of street crimes. In this order, Dave Cavagnaro, Christopher Ortiz, Officer Day, Sergeant Carini, Officer Madden, Officer Marchesano, and Adam Shaw were moved out of street crimes. As for the members of street crimes that stayed on, the criteria to keep officers on included seniority, the ability to speak Spanish, and needing a

female officer on the unit to be able to make female victims feel more comfortable when the unit would report to a scene. Austino recalled that the officers that were moved and those that remained on the unit were all PBA members.

Austino testified to a set of emails around October 27, 2016, for leave requests from various officers. (R-140.) It was Austino's role as captain to assemble leave requests and take them to the chief. In his position, he sometimes had to deny leave requests if it would create overtime for a shift or spread the unit too thin. These emails included requests from Dave Cavagnaro for use of PBA president time, which were denied because it would create overtime for other officers and was denied by Chief Codispoti.

Austino was a member of the PBA from when he was hired in 2001 until 2019. He testified that he ended his union membership as a result of the PBA's lawsuit and allegations against him. When he was an active member of the PBA, he went to meetings and served on various committees, but was never a part of the executive board. Austino testified that he has never retaliated against anyone based on their union activity.

Prior to Austino receiving notice of any discipline, there was a newspaper article dated September 14, 2021, detailing a press release from the City of Vineland that stated the city would be returning the street crimes unit to operation because of a change in administration. At the time, Austino, Beu, and Riordan were still employed, and the change in administration did not occur until a month and a half later when the three of them were terminated. Austino believes that these moves were politically motivated, as their removal allowed the mayor "to promote all of his friends."

Mayor Anthony Fanucci, who was elected in 2016, was the best friend of Greg Pacitto, then PBA president, and friends with Dave Cavagnaro, Brian Madden, and other members of the Vineland PBA executive board. Around the time of the election, it was openly discussed that Fanucci would take care of the PBA, and that in 2015 the PBA began to discuss contributing to Fanucci's campaign. Austino could not remember a time while in the PBA that they had endorsed a mayoral candidate prior to this. These contributions and endorsement of Fanucci's campaign was a contentious topic in the

PBA, particularly because the PBA was in dire financial straits after the previous PBA president and treasurer were arrested for theft from the union.

The PBA's draft complaint named Beu, Finley, and Austino as individual defendants. (R-11.) Austino was first shown the document by Chief Beu, who was given it by Rich Tonetta. The complaint included the MVR issue, a complaint that all officer reports had to be filed in their cars, a complaint that officers were unfairly not allowed to eat in a certain room in VPD HQ, and that the administration was unfairly denying the use of special event time.

Austino testified that he had made two complaints under the City of Vineland's whistleblower policy. (R-26.) The first complaint, made in 2015, was because he believed that he was going to be retaliated against by then-Chief Codispoti for the soda fund investigation. The second complaint was made in 2017 against Greg Pacitto, Christopher Landi, and Adam Shaw. This complaint was in response to the T.C. incident and was submitted fifteen days after the submission of the critical incident report against Austino. Austino stated that his intent in filing the complaint and sending a letter to Chief Beu was to have management intervene and contribute to a harmonious workplace and try and smooth out all of the labor disputes. Although Austino never sat down with these officers to work out their differences because all parties were bogged down in some sort of legal proceeding, he stated that he eventually spoke personally with Landi and indicated that they were close friends again prior to Austino's removal.

Austino testified that he worked with his attorney in reviewing his civil lawsuit against the City of Vineland, but that his attorney drafted the final copy. He acknowledged that the complaint mentions that Casiano "conducted" a body cavity search and that Casiano did not conduct the search himself but instead authorized it as the station house commander. After Austino filed the complaint, he was referred to the prosecutor's office by the city for releasing confidential IA information, but he was exonerated of that charge.

Austino and Todd Gelfand knew each other prior to this matter because they worked together on White v. City of Vineland, when Gelfand was serving as city counsel and Austino was in IA. Austino and Gelfand also live in the same neighborhood. After a

deposition in the White case, Gelfand told Austino that Tonetta had contacted him and wanted him to do an investigation into Austino, but Gelfand did not want to take the case because of his working relationship with Austino and that he did not feel comfortable doing it. In May 2019, a few months after this exchange, Austino was in Virginia at the FBI Academy for a police training program and Gelfand gave him a phone call. During this call, Gelfand apologized for saying he wasn't going to take the case previously but was now going to participate in the investigation because his firm wanted him to do it for the money. Austino then learned that this was not relevant to *his* complaints, but he was rather the target of the investigation.

Austino testified that when he first learned that Gelfand was conducting the investigation in November 2019, he was under the impression that Gelfand did not have access to Austino's IA and criminal investigation files. During his first interview with Gelfand, he believed that Gelfand did have access to the files, and then Austino's attorney instructed him to contact CCPO. When Austino did contact CCPO he communicated with Ron Henry who handled the investigation of the MVR matter, who informed Austino that Gelfand did have his file and CCPO was not aware of it. Henry asked Austino if he wanted to file a complaint, which he answered affirmatively. Austino filed the complaint because his attorneys were indicating that if the city and Gelfand were looking at his files that they may be trying to bring issues back up that he was exonerated from.

In January 2011, Austino was transferred to the training unit, and he found that there was cash in a safe with a ledger book. At the time his supervisor was Captain Laria, and when Austino inquired about the cash Laria explained that it was for incidental expenses related to the training range, and Laria told Austino to just keep record of the cash that was coming in and out. Austino soon learned that a community member was being allowed to come to the range and take the brass bullet casings that they were stockpiling. Austino stated that his suspicion with the account and the practice of stockpiling and selling the brass began around this time. Over time, the cash began to accumulate and Austino stated that there was \$3,000 to \$4,000 in cash sitting in the safe and he expressed to Laria that he was uncomfortable with it. Laria attempted to have the VPD finance director have a carryover account created, but the state denied the application. Austino then went to Michelle Pedulla, who gave him a deposit slip for

Newfield Bank. This then led to the training unit consistently scrapping the brass and bringing the cash to Pedulla. Later, Austino voiced his frustration to Matt Finley with having to handle so much cash, and Finley told Austino that he had had learned that the Soda Fund money was being used inappropriately. As a result, Austino ordered his staff to stop scrapping the brass. In May 2015 Austino went on paternity leave, and when he returned the brass stockpile had once again been sold. He learned that community policing had begun picking the brass up while Austino was out. Austino spoke to Matt Finley again about it, considering that there was some "shadiness" around the situation.

Soon after, Finley, Austino, Beu, and Wolf had a conversation in the Lieutenant's Office about what they perceived to be strange happenings in the department that stemmed from Chief Codispoti. Austino testified that Finley went on a rant about Codispoti and saying that he was stealing money. Wolf then went straight to Codispoti and reported everything that Finley had said and Chief Codispoti ordered Beu to write Finley up. Codispoti then spoke with Austino and explained that there was nothing wrong with scrapping the brass and that Rich Tonetta said they could continue scrapping. That same day, Austino testified that he received a phone call from either Finley or Beu, who told him to meet them at city hall because the staff at the business administrator's office wanted to discuss the brass with him. He attended the meeting which included Bob Dickinson, Edwin Alicea, Rich Tonetta, Rudy Beu, and Matt Finley. At the meeting, Tonetta stated that scrapping the brass was not okay and that Austino should not continue with the practice, over Codispoti's instructions. Austino could recall that Beu and Finley said that Wolf had to do something about Codispoti, but they acknowledged that no one in the room could order him to do anything because none of them were the chief.

Beu then told Austino that he was going to bring the matter to the prosecutor's office. Austino was contacted by Ray Cavagnaro to be interviewed, and Austino prepared a timeline of these issues to present at the interview. (R-30.) Austino recalls that at this interview he was questioned as to whether he thought Wolf going directly to Codispoti after the meeting in the Lieutenant's Office was appropriate, to which Austino stated he believed it was inappropriate for him to do so. Austino testified that he did not know until discovery in this matter that there was an IA investigation into Wolf and that the conclusion

was that Wolf did something wrong by going to Codispoti. Austino acknowledged that the matter was administratively closed, and Wolf was never disciplined.

Austino testified that he was surprised when he was accused of disciplining Wolf for the community policing fund. Austino explained that Beu had indicated to him that Wolf would be transferred out of IA because Beu "wanted changes." When Austino learned of this he asked Wolf if he would like to become the training lieutenant, but he refused.

On December 14, 2016, Greg Pacitto, Adam Shaw, and Brian Armstrong reported Austino to the CCPO for allegedly spying on officers and wiretapping. Austino testified that since the installation of the MVRs in 2014 or 2015 that there were always problems with the devices not recording, which was noticeable to him in early 2016 when he served in IA. Austino explained that the audio issues not only made investigations difficult, but also prevented "meaningful reviews" of randomly selected officer pursuits to make sure that staff are adhering to the strict police pursuit protocol. At the time, Sergeant Fulcher was the technology sergeant, who reported to Captain Laria as the services division captain. Austino testified that Laria was not technologically savvy, therefore Fulcher was the point of contact when it came to the MVR and similar technological issues.

Austino recalled that on December 12, 2016, Wolf called Austino into an office to talk, and was very upset that the MVR was still not working, and that Fulcher was not able to correct the issue. Austino recalled that it was the end of the day, and he didn't know what Wolf expected him to do about the issue, and communicated to Wolf that they were of equal rank so Wolf should just talk to Fulcher about his concerns and tell him to make it work. Austino made it clear that he did not tell Wolf to activate the live stream, as he was not even familiar with the software and did not know how to access it. On December 14, Austino received a call from Chief Codispoti telling him that Pacitto was in his office and upset about wiretapping. Austino then called Fulcher to figure out what the wire-tapping allegation was in reference to, and Fulcher explained that they turned the MVR back on and now the live stream function was on, which upset officers. Austino understood that this was a misunderstanding and told Fulcher to send an email to the department explaining, but no such email was sent. Instead, Dave Cardana sent an email that Austino was ordering that all patrol vehicles equipped with an MVR had to use the

mic pack in the vehicle if they did not have a BWC. (R-143.) The intent of this order was to get audio to work if the MVR was no longer permitted to be on. Ultimately, CCPO conducted an investigation, and he was exonerated, and an IA investigation took place which also found no wrongdoing by Austino.

At the time that B.B. filed a complaint in March 2016, Austino was a member of IA with Leonard Wolf. After discussing the matter, he and Wolf sent the matter to CCPO to investigate. Months later, CCPO sent them back a declination letter that declined criminal prosecution but stated that a body cavity search occurred. At that time, Austino was no longer in IA, but Chief Codispoti told Austino that he wanted him to assist Wolf in the investigation as it was going to be a lot of work. Both Wolf and Austino prepared reports, with Wolf completing his first with the first half of interviews, and Austino's picking up with his interview of Casiano. Austino's report (R-33) detailed the inconsistencies between the video of Casiano talking to Madden and Roberti, and what Casiano stated in his interview. Austino pointed out that Madden was wearing rubber gloves and simulated grabbing an item, and both Madden and Roberti reenacted B.B. "spreading his butt," but Casiano said that the bag of drugs was visible in B.B.'s waistline of his underwear. Austino stated that his report was completed after meeting with Mike Benson on February 17, 2017, but he had a draft report that discussed the recommended charges that should be listed. Austino testified that untruthfulness was a subject of the discussion in the meeting, and that he, Wolf, Beu, and Benson all believed that Casiano had lied. Austino was told what recommendations were to be included in his report by Beu, and that although they believed Casiano was untruthful, a charge of untruthfulness was never recommended and Casiano was never notified.

The CCPO's investigation into Beu, Riordan, and Austino referenced Austino's questioning of Sergeant Bontcue's review of Madden's report in the B.B. matter. Austino explained that he questioned Bontcue because the file tracking data indicated that Bontcue had opened Madden's report for review without approving or rejecting it. Austino also explained that Bontcue was questioned because he was the supervisor of the officers who were involved in the matter and wanted to know why B.B. was under arrest off camera and in a separate room. Austino understood that one of the consequences of the



B.B. matter was that re-training may be necessary in the department or for the officers involved.

Soon after the arrest of T.C., Austino got a complaint notification letter from IA informing him that he was the target of an investigation. When he went to IA he received a copy of the complaint and the critical incident report, which stated that he ordered the arrest of T.C. for disorderly conduct, but the charge should have been obstruction. Austino stated that he was surprised when he looked at the critical incident sheet because it was submitted three days after the arrest and no one in the department talked to him about it. In Austino's experience, typically a supervisor would have a conversation with an arresting officer who may have conducted an arrest under an improper charge. Austino testified that obstruction is a more serious crime, and disorderly conduct is a petty offense. Austino testified that Officer Selby was going to arrest T.C. sooner for his conduct, but Austino told him to stand down as they tried to smooth the situation over. Ultimately, Austino ordered his arrest after he perceived him to "square up" and was clearly intoxicated and engaging in tumultuous behavior. Austino acknowledged that he was not interviewed by IA, but he did try to provide them with case law to understand why he made the arrest in the fashion he did and where he could have gone wrong, as he believed that T.C.'s behavior met the definition of "tumultuous." Austino testified that he did not ask anyone in IA or Matt Finley to open an investigation into Landi and Pacitto.

**Michael Benson** testified on behalf of the appellant. He was the associate solicitor for the city of Vineland. Prior to being employed full-time by the city, he had served as outside counsel for the city and handled various matters including disciplinary matters involving the police and general employees of the city. Disciplinary matters for the police were usually first investigated by the IA unit.

Benson was associate city solicitor during the B.B. matter. He first learned of the matter during a phone call with Leonard Wolf on February 16, 2017. His billing records (P-11) reflect that after this phone call and receiving a copy of Wolf's report he reviewed the AG Guidelines regarding body cavity and strip searches, a general order, and a telephone call with Sergeant Riordan who was in IA at the time. In total he billed 3.4 hours for this research after his phone call with Wolf. The following day he billed for more

review of strip and body cavity searches and a 2.6-hour meeting with Chief Beu, Captain Austino, Lieutenant Wolf and Sergeant Riordan. Benson could not confirm whether Austino had completed his half of the B.B. investigation report at the time of this meeting but did acknowledge that the final date of the report was five days after the meeting. Benson did not recall whether Wolf's report mentioned concerns with truthfulness and does not recall whether Austino or Wolf offered their opinion as to whether the targets of the investigation were being untruthful. Benson also acknowledged that after the Wolf and Austino reports were concluded, he was still billing for research into body cavity and strip searches and met with Mayor Fanucci and Rich Tonetta on March 13, 2017, to discuss the liability issues that the B.B. matter could potentially raise for the city.

On August 24, 2017, Benson emailed Rich Tonetta explaining that despite Pedro Casiano's attorney telling Tonetta that Benson was being unresponsive, he was communicating with them adequately. (P-16.) Benson also raised the issue that there were some truthfulness questions concerning Casiano's denial of certain facts during his IA interview with Wolf. Despite raising this issue, Benson testified that he personally did not have any truthfulness concerns about Casiano and was rather concerned with Casiano's handling of his supervisory responsibilities at the time. Benson acknowledged that around that time the chief was considering a thirty-day suspension of Casiano. Despite raising the issue of truthfulness in this communication, Benson testified that "the truthfulness issue was really a sideline. I raised it as my professional duty to just indicate there was one question raised concerning truthfulness."

Benson submitted a mediation statement in the Casiano discipline proceeding to the mediator, Judge Georgia Curio, providing an overview of the case. (P-15.) Benson included Austino's report as his first exhibit and stated that Casiano observed Madden re-enacting B.B. pulling his pants down and "spreading his butt cheeks," and that Casiano's suggestion that the CDS on B.B. was in the waistband of his underwear was "entirely disingenuous." On cross-examination, Benson stated that his use of the word "disingenuous" does not flag Casiano for "untruthfulness," and instead means that Casiano was simply "not being entirely forthcoming." Benson believes that he did not believe at any point in time that based off the information that was presented to him,

including the interviews, video, and records, that the city would have enough to prosecute a charge of untruthfulness.

Benson was also included on the November 11, 2021, email from Jennifer Webb-McRae advising the city that it could not summon Beu, Austino, or Riordan to answer questions about their actions and decisions relating to the VPD IA function and to not have the previously scheduled November 15 meeting. (P-18.) Benson recalled receiving the communication but acknowledged that they did not stand down and proceeded with their Loudermill hearing with the officers. Benson testified that the city's stance was that the city was entitled to protect itself from liability pertaining to the HR issues that were raised.

### **Discussion**

Credibility contemplates an overall assessment of the story of a witness in light of its rationality, internal consistency, and manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718 (9<sup>th</sup> Cir. 1963). A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App Div. 1958).

Gelfand was retained by the City of Vineland to investigate alleged abuses of VPD's internal affairs process. The goal and focus of the investigation was to determine whether VPD's IA processes were used in a nefarious way. In conducting his investigation, Gelfand reviewed fifteen (15) IA files relevant to the community policing fund, the soda fund, the B.B. strip search, the T.C. arrest, and the MVR recording system issue. After completing his investigation, Gelfand concluded that in general, the PBA's complaints that Chief Beu, Captain Austino, and Matt Finley and "at times" Tom Riordan participated in the overall course of differential treatment and retaliation were correct.

Gelfand acknowledged that under the IAPP an investigator is supposed to be unbiased. Gelfand also acknowledged that soon after his investigation began, that on December 18, 2019, Austino had made accusations of criminal conduct against Mr.

Gelfand to the CCPO. Gelfand testified that he was "scared" after learning of these criminal charges because he thought that he would be pulled over driving through Vineland and arrested. As a result, Gelfand hired a lawyer. When asked whether he was able to set these circumstances aside when conducting his investigation, Gelfand stated "So did I set it aside entirely? No, I didn't."

A review of the Gelfand report leads me to question his impartiality as it contains unsubstantiated conclusions and overreaching not supported by the facts presented in the matter. It is also contrary to various findings made by the CCPO.

There was no evidence presented that Austino had any part in the Finley take home vehicle matter, yet Gelfand uses this incident as the springboard for his conspiracy theories. Gelfand's report stated, "I find that Beu and/or Austino were aware and on notice of Finley's retaliatory motivations, but assisted and schemed as a group in a mission for which success would essentially clear the way for Beu, Finley and Austino to takeover command of police administration." (R-1, page 38.) No factual basis is provided for this inflammatory statement, and it is not what is expected in an independent investigation.

Likewise, Austino was not involved in the Community Policing Fund investigation for which Wolf received discipline. Wolf was not disciplined for the Soda Fund investigation in which Austino was involved. Nevertheless, Gelfand concludes that Wolf really received discipline in the community policing fund investigation because of his involvement in the Soda fund matter. This conclusion is not supported by the facts as discussed in Cavagnaro's report. (R-19, page 19.)

Austino was exonerated in the T.C. case. The critical incident report was filed against Austino by Pacitto. There is no evidence that Austino participated in the IA investigation or had anything to do with any discipline as to Landi. Nevertheless, Gelfand concludes "I thus find this matter sustained as additional strong support for the PBA general allegation of retaliation and differential treatment through perversion of the VPD IA process at the hands of Chief Beu, Captain Finley and Sgt. Riordan. Under all of the circumstances, I do not believe that this matter would have been handled as it was, as to

the VPD IA process, if the disorderly conduct arrest was ordered by someone other than Austino, Beu or Finley." (R-1, page 147.)

Regarding the MVR allegations against Austino, Gelfand's report (R-1, page 105) states:

Based upon the interviews and evidence provided to me, it indeed appears quite clear to me that **Captain Austino** directed the activation of the livestream audio feature of the MVRs in December of 2016, **not** for purposes of spying on PBA members, but rather because the department was having difficulties setting up the MVRs or other recording devices so that "triggering events" for the recording of video in the police cars, for example prisoner transports, would be recorded with **audio and video**...I indeed believe that this, rather than any form of "spying on officers" was his true motivation for activation of the live stream audio.

Despite acknowledging the legitimate police purpose for Austino's issuing the make it work order, Gelfand concludes that Austino's actions were in complete disregard for the privacy rights of officers. However, there was no evidence that anyone's privacy rights were violated and as soon as the livestreaming was brought to the attention of the chief it was ordered shut down. The officer's privacy rights were protected.

Regarding other various claims of retaliation described by the PBA, primarily at the hands of Captain Finley, with some participation by Chief Beu, Captain Austino and Riordan, Gelfand acknowledges that although most of the non-IA specific complaints seem to be judgment calls, for example, prohibiting officers from returning to headquarters to write reports; prohibiting officers from eating and drinking at certain locations in police headquarters; denial of a grievance concerning "special event time" pay for the PBA Executive Board members; and the denial of Richard Burke's request to use vacation time during restricted duty status. Gelfand finds that these complaints are also sustained as alleged in the PBA unfiled lawsuit. This further suggests that Gelfand is not impartial as these issues are issues well within management's rights as set forth in the collective bargaining agreement. (R-119.)

Prosecutor Jennifer Webb-McRae directed Sgt. Raymond Cavagnaro of the Professional Standards Unit of the CCPO to conduct an IA investigation of Adam Austino, Rudy Beu, and Thomas Riordan as there were alleged violations of the IA policies and procedures. Cavagnaro was instructed to review the Gelfand report and ascertain whether those violations had in fact occurred. Cavagnaro was then instructed to conduct a random review of VPD IA investigations from 2014 up to 2020.

Cavagnaro's report (P-19) concludes:

Certain allegations relating to violations of the IAPP, identified in the Gelfand Report, were confirmed and other allegations were not confirmed. Additionally, the CCPO undertook a random review of Vineland Police Department Internal Affairs investigation files from 2014 through March 2020, which files were not identified in the Gelfand Report. After the review, and as set forth above, certain Internal Affairs investigations were handled in conformity to the 2014 IAPP and others were not. Said violations set forth in detail above, identified in the Gelfand Report and the CCPO random review, occurred during the tenure of both Chief Codispoti and Chief Beu, as well as multiple VPD Personnel assigned to the Internal Affairs Unit.

The CCPO, along with the attorney general, has the exclusive authority to oversee the IA function of the VPD, including the obligation to ensure that the VPD IA unit is acting in conformance with the IAPP. Sgt. Raymond Cavagnaro of the Professional Standards Unit of the CCPO was a neutral and independent IA investigator in this matter and I deem his report (P-19) and testimony to be more persuasive and entitled to greater weight than that of Mr. Gelfand.

Based upon due consideration of the testimonial, documentary and video evidence presented at this hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, **I FIND** the following as **FACTS**:

The Cumberland County Prosecutor's Office is the chief law enforcement office in the county of Cumberland and the County Prosecutor is the chief law enforcement executive of the county.

The Cumberland County Prosecutor's Office is tasked with the oversight of the Internal Affairs of all police agencies within its jurisdiction, which includes the VPD.

The county prosecutor, along with the AG, has the exclusive authority to oversee the IA function of the law enforcement agencies within its jurisdiction, including the obligation to ensure that the IA units within the county are operating professionally, effectively, and in conformance with the IAPP.

The Vineland City Police Chief, under the direction of the Public Safety Director, is the chief executive officer and in charge of the VPD.

The IAPP states that personnel of the IA Unit serve at the pleasure of and are directly responsible to the Chief of Police or designated IA supervisor. The IA Unit acts at the behest of the Chief of Police in all IA investigations. Complaints against the Chief of Police shall be referred to the county prosecutor for investigation.

Possible dispositions of an IA investigation include 'exonerated', 'sustained', 'not sustained' or 'unfounded'. Upon completion of the investigation, the IA investigator will recommend dispositions for each allegation through the chain of command to the Chief of Police. The Chief, upon reviewing the report, supporting documentation and information gathered during any supplemental investigation, shall direct whatever action is deemed appropriate. 'Administratively closing' a case is also an option. If the complaint is sustained and it is determined that formal charges should be made, the Chief of Police will direct either IA or the appropriate commanding officer to prepare, sign and serve charges upon the subject officer or employee.

### **The Soda Fund**

The fund began as a collection of the funds that came from the utilization of a soda machine within the police department, but also incorporated the profits from the sale of brass bullet casings from the firing range. Austino alerted Finley to the fact that he had issued an order to stop the sale of the brass, and that when he returned from leave, he learned that the brass had been sold. Finley and Austino met with then acting-chief Beu,

and Lieutenant Wolf was also a participant in the meeting. When they discovered a log that demonstrated that hotel accommodations were paid for by the soda fund, Beu instructed Wolf to investigate.

Chief Codispoti held sole discretion as to what purchases were conducted with the proceeds from the Soda Fund. In his interview with the CCPO on June 28, 2016, Chief Codispoti provided explanations for numerous purchases made with the Soda Fund and that all purchases were for the betterment of the police department and its employees. The CCPO returned the matter to Director Alicea for any administrative action deemed appropriate regarding Chief Codispoti and any collateral issues. When the matter was returned for administrative action, Codispoti had already retired and Chief Beu was the chief executive of the department and was authorized to direct whatever action he deemed appropriate. "Administratively closing" the investigation was his decision and at his discretion. (P-19, page 19.)

Wolf received no discipline for his involvement in the Soda Fund matter.

The Community Policing Fund was a separate fund maintained by the Community Policing Unit. An issue arose regarding this fund when an officer had drawn funds from the account for personal use, which was a mortgage payment. When Wolf brought this to Chief Codispoti's attention, the chief advised that it was a clerical error, and that the money was back in the account. Later that day, the prosecutor's office arrived at VPD with a subpoena for any kind of banking records related to the Community Policing Fund and an investigation began. One day in August or September 2017, Wolf was called into the office and Chief Beu, Thomas Riordan, and Lieutenant Triantos were present. Wolf was informed that he had been found to be negligent in "a variety of matters" regarding the Community Policing Fund, and he was presented with a PNDA and was to serve a major suspension of six or more days. According to Wolf, the officers in the room "threatened" him to take the discipline without a fight because the city was upset about the matter and that by accepting the punishment it would help assuage the situation. After some negotiation, Wolf was able to reduce the discipline to a non-major suspension without the negligence charges and a revised document was drafted and then signed by Wolf. After serving this suspension, Wolf was transferred out of IA in October 2017.



Wolf acknowledged that although he was not given an explanation for his removal from IA, that there is nothing in the collective bargaining agreement that requires an explanation when the chief of police orders a transfer.

Captain Austino was not a part of the Community Policing investigation, or the report issued by Riordan against Wolf, or the discipline given to Wolf.

### **The MVR Issue**

VCPD General Order # 16 of 2015, with an effective date of September 9, 2015, revised November 10, 2016, dealt with Mobile Video Recorder (MVR)/BWC. (R-3.)

**PURPOSE:** The purpose of the general order was to establish procedures for the use of (MVR) and (BWC). MVR/BWC were intended to enhance officer safety, produce effective materials for training, and to produce an additional method of collecting evidence to prosecute those who violate the law.

**POLICY:** It is the policy of the VCPD to utilize MVR/BWC to their fullest extent for the day-to-day patrol function and to maintain the necessary safeguards that will ensure the non-discriminating use as well as the proper preservation of evidence that may be obtained through use of this technology.

There is no intent to utilize the MVR/BWC as a management tool to punish officers for minor departmental rule infractions. Personnel shall not be subject to criticism for the proper exercise of lawful discretion in enforcement matters and MVR/BWC shall only be utilized for legitimate law enforcement purposes.

Adequate safeguards are necessary to ensure that this technology is used in a non-discriminating way, used to properly preserve evidence and used to safeguard against potential violation of the New Jersey State Wiretap Laws, N.J.S.A. 2A:156A-1 to 156A-37.

**PROCEDURES:**

**General**

- A. All referenced to MVR and BW include the equipment installed in the police vehicles, body worn devices and where appropriate, the wireless transmitter/microphone, removable media (HDD/SSD), server, and other accessories necessary to operate these systems.
  
- B. When properly used, this equipment will have the following capabilities:
  - 1. Creation of accurate documentation of motorist contacts and other patrol related activities.
  - 2. Preservation of an audio and video record of events, actions and conditions, during arrest, critical incidents, and prisoner transports.
  
  - ....
- G. MVR and or BWC are intended for official police department use only and are not to be used for frivolous or personal activities. Any sworn officer, or civilian employee, who knowingly violates the requirements of the NJ Attorney General Law Enforcement Directive 2015-1 or this policy shall be subject to discipline.
- J. MVR:
  - 1. The MVR system consists of a front view and rear seat/view digital camera, wireless microphone, Power control Monitor (PCM) with controls, mobile digital video recorder (DVR), and system server.
  - 2. The MVR is preprogrammed to automatically begin recording when any one of several different "triggers" are activated. These triggers include:
    - a. The vehicle's emergency lights are activated;
    - b. The wireless microphone is activated;
    - c. The vehicle speed exceeds 65 mph; or
    - d. The vehicle is involved in a crash.
  - 3. Whenever the MVR is activated, officers shall verify that the audio portion has also activated. The wear/use of the MVR wireless transmitter is not required when the officer is equipped with a functioning BWC. (R-3.)

Since the installation of the MVR system in 2015, there had been continuous problems with the system not recording. Sgt. Fulcher was the technology officer for the department.

The traffic division officers in 2015 had previously complained to Pacitto regarding the MVRs in the cars not working properly and were continuously live streaming conversations from the car. Pacitto had gone to Chief Codispoti who directed that the live stream audio be turned off in the police vehicles until the system worked properly.

In December 2016, Armstrong became aware of the livestream in the patrol car. He was aware that in the days and weeks prior thereto, the city had been having difficulty with the audio in the patrol cars. The audio was not working when prisoners were being transported and it was important that the audio be working for prisoner transport as sometimes, they admit what they did, confessions can be captured on the car audio, and sometimes the prisoner commits further crimes by saying things or harassing officers which may be justification for other charges. There had been a lot of discussion in the department about the malfunction of the audio during prisoner transports. Things are recorded and downloaded when close to the station and can be used as evidence in a case and to assist when preparing reports. Someone trying to prepare a report using the video with the microphone not working is going to have a problem writing their report. If there was a problem and a malfunction with the software, Sgt. Fulcher would be the one to address the problem. Captain Austino was the patrol captain at the time and was aware of the problems with the MVR system and the lack of microphones.

The problems with the MVR system were noticeable to Austino in early 2016 when he served in IA. The audio issues made investigations difficult and prevented 'meaningful reviews' of randomly selected officer pursuits to ensure staff are adhering to strict police pursuit protocol. Sgt Fulcher was the technology sergeant and the point of contact when it came to the MVR and other technological issues. Wolf was equally frustrated with the MVR audio issues and the system hampering their ability to conduct investigations where sound would normally be available and complained to Austino. Austino told Wolf to talk to Fulcher about his concerns and tell him to make it work. Austino did not tell Wolf to activate the live stream as he was not familiar with the software and did not know how to

hoping it would work for us to create an audio and video record of police officers performing their duties.”

During his interview with the prosecutor’s office regarding the MVR issue, in regard to Austino, Wolf stated that “He is a very ethical and credible person. I would not believe he would [turn on the audio] intentionally to try and gain something. That’s completely out of character for him.”

There was no evidence and no testimony from anyone that anybody, including Austino, ever listened to the live stream audio or that anyone’s privacy rights were violated.

Based on CCPO Detective Sgt. Henry’s investigation, which included numerous interviews, First Assistant Prosecutor Shapiro determined that the investigation did not reveal evidence of criminal activity. A letter of declination indicating same was issued on April 4, 2017, and a VPD IA was initiated.

After reviewing the prosecutor’s investigation and interviewing Sgt. Fulcher, Officer Cavagnaro and Officer Sherban, Sgt. Riordan determined that Austino’s order did not violate any Rules and Regulations of the VPD and recommended that Captain Austino be exonerated. Sgt. Riordan determined that Captain Austino had the authority to issue a second order activating the live stream audio in the patrol vehicles. This recommendation was reviewed and approved by Chief Beu, which was appropriate per the 2014 IAPP (P-19).

**B.B.**

On March 21, 2016, B.B. filed an IA complaint against members of the VPD, Street Crimes Unit.

The B.B. investigation pertained to a search of B.B.’s person, and whether there was an impermissible strip search or body cavity search. After some initial fact-finding, the matter was sent to the Prosecutor’s Office for a review and was then sent back to

VPD after the CCPO declined to pursue criminal prosecution against any of the involved officers. The disposition of the CCPO's July 20, 2016, letter remanding the matter back to VPD (R-125) determined that it was a body cavity search that was done at VPD and was in direct violation of the AG Search Requirements.

Following the return of the case to VPD for an administrative investigation, an IA investigation was done by Captain Austino and Sgt. Wolf and discipline was issued against multiple officers.

During their IA investigation, inconsistencies were identified by both Wolf and Austino regarding Lt. Casiano's statements and issues of truthfulness were a topic in the investigation.

A review of Captain Austino's IA report (R-33) states that during an interview of Lt. Casiano he reviewed Madden's report with him:

"I kept watching B.B. while I opened the conference room door and advised Ptl. Marchesano to come into the conference room with me. Pt. Marchesano entered the room and as he did I told B.B. that I know that he shoved a controlled dangerous substance up his anal cavity. Again, and without warning again B.B. quickly stood up and pulled his pants down and bent over and spread his butt checks [sic] again and as he did Ptl. Marchesano and I both saw the piece of plastic sticking out of his anus. I asked Ptl. Marchesano to keep an eye on B.B. while I stepped out of the room. I spoke to the Station House Commander, Lieutenant Casiano, as well as patrol shift sergeant, Sergeant Ruberti, and advised them of the situation."

(Austino IA Report #2016-0046, page 4.) (R-33.)

"Casiano again stated this was not communicated to him, specifically he said he was not told that B.B. 'spread his butt.'" (Footnote 5.) Footnote 5 identifies this as inconsistent with video evidence. (Austino IA Report #2016-0046, page 4.)

Additionally, Captain Austino identifies an inconsistent statement made by Lt. Casiano and Officer Maden, whereby "Madden stated he was explicit to Casiano that B.B.

pulled his pants all the way down, not that the bag was protruding from B.B.'s waistline". (Austino IA Report #2016-0046 page 9.) (R-33.)

Sgt. Wolf's report details the interview of Sgt. Anthony Ruberti, whereby "At no time did Sergeant Ruberti believe that this suspected bag of narcotics, as described by Officer Madden, was sticking out of the waistband of the arrestee's pants or protruding from anywhere but his 'ass cheeks.'" (Wolf IA Report #2016-0046 page 7.). Sgt. Wolf's investigation report indicates "This description of the location of this suspected bag of contraband was a significant departure from Lt. Casiano's accounting of Officer Maden's description, as given in his interview." (Wolf IA Report #2016-0046 page 7.)

On February 17, 2017 Wolf, Benson, Chief Beu, Riordan and Austino had a meeting to discuss what the officers would be charged with. Casiano was not charged with untruthfulness. Mr. Benson's billing for February 17, 2017, indicates that he billed 2.60 hours for preparing and attending the meeting with Chief Beu, Captain Austino, Lt. Wolf, and Sgt. Riordan. (P-11.)

The VPD IA investigation file on the B.B matter contains an October 31, 2017, mediation letter submitted by Mike Benson, Esq., to Judge Curio. (P-15.) The letter states in part:

Lieutenant Casiano attempts to suggest that he believed Madden had said the bag was somehow placed in the waistband of the subject's underwear. This is never referenced by anyone and conflicts with the numerous references in Madden's incident report to all three anal exposures, to the subject spreading his butt cheeks and Madden observing the bag sticking out of his anus. During the third exposure Madden is very specific and graphic. The subject stood up, pulled his pants down, bent over and spread his butt cheeks and Madden attempted to grab the plastic that was sticking out of the subject's anus to pull the controlled dangerous substance from his anal cavity ... Sergeant Roberti further confirmed in his IA interview that Madden had approached him and Lieutenant Casiano with a specific account of the subject exposing a piece of plastic in the subject's anus. Lieutenant Casiano himself is seen in the station hallway video observing Madden's re-enactment of the subject's exposure. It is entirely disingenuous of Lieutenant

Casiano to deny a fact that is so established by all other accounts.

In an August 24, 2016 email from Mr. Benson to Rich Tonetta (P-16), Benson states:

There were some truthfulness questions concerning Lieutenant Casiano's denial of certain facts during his IA interview with Lieutenant Wolf. In any event, at some point Chief Beu offered to reduce it to a 15-day suspension and then I'm told a ten-day was apparently offered. I have not been involved in the reductions although I don't disagree with them. I think the degree of concern generated by this case was and probably still should be the fact of the unique nature of the policy violation in this case that could result in a nasty civil claim.

Austino stated that his report was completed after meeting with Mike Benson on February 17, 2017, but he had a draft report that discussed the recommended charges that should be listed. Austino testified that untruthfulness was a subject of the discussion in the meeting, and that he, Wolf, Beu, and Benson all believed that Casiano had lied. Austino was told what recommendations were to be included in his report by Beu, and that although they believed Casiano was untruthful, a charge of untruthfulness was never recommended.

Benson testified that he believed that based on the information that was presented to him, including interviews, video, and reports that they would not have enough to prosecute a charge of untruthfulness.

There is an allegation at paragraph 42(d) in Austino's federal CEPA complaint filed by Austino's attorney that "Lt. Casiano lied to plaintiff during the investigation." (R-78.)

By letter, dated February 18, 2020, Solicitor Tonetta complained to Chief Beu that an IA investigation be done concerning Austino's release of confidential IA information. This was forwarded to the CCPO. (P-23.)

The CCPO in a letter dated July 17, 2020, stated that under all of the circumstances "Captain Austino's sharing of confidential IA information with his attorney for purposes of pursuing a potential whistleblower claim was justified, legal and proper. As such, Captain Austino is deemed by the CCPO to be EXONERATED." (P-23.)

Aside from this reference made by Austino's attorney in his civil complaint, there has been no evidence introduced that Austino and Beu 'perpetuated' the claim that Casiano lied other than telling that to Gelfand during the course of their interview with him.

Casiano has suffered no adverse employment as he has advanced in the promotional process to the position of Deputy Chief and then Chief.

#### T.C.

On June 10, 2017, T.C. was arrested for disorderly conduct by Officer Dennis. At headquarters T.C. was found to have an active warrant issued by Millville Municipal Court. While reviewing Officer Dennis' complaint, Sgt. Pacitto, who was not at the scene of the arrest, questioned the charge, believing the charge was inappropriate. Officer Dennis advised Pacitto that Captain Austino had been on scene and informed Officer Dennis to charge T.C. with disorderly conduct. After reviewing BWC footage of officers on the scene, and in consultation with Sgt. Landi and Sgt. Shaw, Sgt. Pacitto issued a critical incident report causing an IA Investigation against Captain Austino for issuing an unlawful order.

Captain Finley, who was assigned to IA at the time, conducted an IA investigation and after reviewing additional BWC footage and interviewing Sgt. Landi, recommended Captain Austino be exonerated. Finley noted in his investigation that T.C. did plead guilty to disorderly conduct in his first appearance in Vineland Municipal Court. (R-2B, 25.)

Finley also identified collateral issues against Sgt. Pacitto, Sgt. Landi and Sgt. Shaw. Chief Beu assigned Lt. Riordan to review Finley's investigation so an informed decision of what, if any, discipline should be issued. Lt. Riordan recommended Rules



and Regulation violations against Pacitto and Lt. Landi. According to Lt. Riordan's report, Chief Beu did not find anything which warranted disciplinary action against Sgt. Pacitto. Additionally, due to a delay on Finley to provide the interview of Lt. Landi, Chief Beu believed any disciplinary action against Lt. Landi would be problematic, therefore Chief Beu directed that the investigation be "administratively closed."

Despite the fact that Chief Beu directed the file administratively closed, the IA file lists the disposition against Landi as 'sustained' with counselling issued. CCPO Sergeant Raymond Cavagnaro recommended that Prosecutor Webb-McRae direct a review of the disposition/outcome against Lt. Landi for a possible correction. (P-19, pages 32 and 35.)

Austino was the subject of the critical incident report filed by Pacitto. Following an IA investigation against Austino, it was determined that there was probable cause for his issuing an order for the arrest of T.C., and Austino was exonerated. Austino had no involvement in the IA investigation or collateral investigation against Pacitto and Landi.

#### **Additional Findings of Facts:**

On September 5, 2018, the PBA filed another grievance. (R-118.) The grievance included claims that the National Labor Relations Act was violated by Chief Beu's standing order directing officers that were assigned to platoon two to abstain from drinking or eating while on the department premises, but this order did not apply to the other platoon. The grievance also highlighted derogatory treatment and hostile work environment by Captain Finley and the administration. Austino responded to the grievance on September 14, 2017, in his capacity as acting chief when Chief Beu was away at the time. (R-119.) Austino responded that Chief Beu was within his management rights to make reasonable limits on food and drink in appropriate locations. In response to the harassment and CEPA claims, Austino responded that these kinds of violations are serious and would not be tolerated and requested that the PBA provide examples to aid the administration in granting relief.

David Cavagnaro testified that at the direction of the PBA's attorney, Doug Long, they did not provide examples or proceed to step two of the grievance process to bring it to the attention of public safety director Alicea.

In January 2017, Personnel Order 2016-029 issued by Captain Austino, approved by Chief Beu transferred all of the street crime officers out of the unit. Shaw testified that he advocated for David Cavagnaro to stay on the unit, but Austino raised concerns about his PBA involvement and that he missed too much time. Shaw acknowledged that the decision to alter the unit came from the Chief and that Cavagnaro's time off for PBA duties created a scheduling and overtime issue for the unit.

In 2016, as patrol captain, Austino had to participate in the annual department realignment. During this process, a personnel order was submitted from administration (R-142) after officers bid for different shifts based on seniority. The order was signed by Austino because he was the patrol captain, and Chief Codispoti instructed him to do it. The process of drafting the order is collaborative with the chief and requires various revisions and drafts as much of the department's schedule is being shifted at once. This personnel order included the phasing out of the street crimes unit. This phase out was decided by management at the time and they had planned that five to seven officers were likely to be shuffled out of street crimes. In this order, Dave Cavagnaro, Christopher Ortiz, Officer Day, Sergeant Carini, Officer Madden, Officer Marchesano, and Adam Shaw were moved out of street crimes. As for the members of street crimes that stayed on, the criteria to keep officers on included seniority, the ability to speak Spanish, and needing a female officer on the unit to be able to make female victims feel more comfortable when the unit would report to a scene. Austino recalled that the officers that were moved and those that remained on the unit were all PBA members.

Austino testified to a set of emails around October 27, 2016, for leave requests from various officers. (R-140.) It was Austino's role as captain to assemble leave requests and take them to the chief. In his position, he sometimes had to deny leave requests if it would create overtime for a shift or spread the unit too thin. These emails included requests from Dave Cavagnaro for use of PBA president time, which were

denied because it would create overtime for other officers and was denied by Chief Codispoti.

The officers who reported the MVR alleged wiretapping issues, including Pacitto, Armstrong, Shaw, Cavagnaro, and O'Neill suffered no adverse employment action.

Regarding other various claims of retaliation described by the PBA, for example, prohibiting officers from returning to headquarters to write reports; prohibiting officers from eating and drinking at certain locations in police headquarters; denial of a grievance concerning "special event time" pay for the PBA Executive Board members; and the denial of Richard Burke's request to use vacation time during restricted duty status, these issues are within management's rights as set forth in the collective bargaining agreement.

### **LEGAL ANALYSIS AND CONCLUSIONS**

Appellant's rights and duties are governed by laws including the Civil Service Act and accompanying regulations. A civil service employee who commits a wrongful act related to his employment may be subject to discipline, and that discipline, depending upon the incident complained of, may include a suspension or removal. N.J.S.A. 11A:1-2, 11A:2-6, 11A:2-20; N.J.A.C. 4A: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). Evidence is said to preponderate "if it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted). Stated differently, the evidence must "be such as to lead a reasonably cautious mind to a given conclusion." Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958); see also Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959).

Appellant has been charged in Count 1 with violating N.J.A.C. 4A:2-2.3(a)(12), "Other sufficient cause." Other sufficient cause is an offense for conduct that violates the implicit standard of good behavior that devolves upon one who stands in the public eye

as an upholder of that which is morally and legally correct. The specified 'Other sufficient cause' allegations against appellant are for improper employment practices – retaliation and/or disparate treatment in violation of New Jersey and federal employment laws as set forth in Schedule A of the FNDA dated October 21, 2022. Schedule A, paragraph 3 alleges that Austino, through his actions or omission, and through the use of his authority and power, retaliated against and/or disparately treated persons who complained of wrongdoing or who were perceived as associated with those who complained of wrongdoing. It is also alleged that Austino aided and abetted an environment whereby such intimidation and/or punishment would occur. Schedule A lists four specific issues: the Soda Fund, the MVR livestream, the B.B. strip search and the T.C. arrest. An additional catchall paragraph also references any other actions of Austino set forth in Gelfand's report.

The Soda Fund (FNDA, Schedule A, paragraph 4) alleged:

During the time frame of 2016-2017, Austino aided and abetted retaliation as to a VPD Internal Affairs (IA) Sergeant, Leonard Wolf, who was perceived as unsupportive of Beu, Finley, and Austino, including in their efforts to investigate then Chief Timothy Codispoti for VPD's long-time maintenance of a bank account (known as the "Soda Fund") which had contained proceeds from a soda machine. As to the Soda Fund matter, Wolf did not initiate an IA investigation, since: (1) he did not understand, in good faith, that Austino was requesting one; (2) Austino had decided that he (Austino) would conduct an investigation, even though Austino was not in IA; and (3) such an investigation should have properly been conducted by the prosecutor's office. Wolf was later subjected to discipline without notice, and unfairly criticized in documented IA documentation. He was then removed from the IA unit.

As set forth in the findings of facts, Wolf was not disciplined for his involvement in the Soda Fund matter. That matter was administratively closed by Chief Beu when it was returned from the prosecutor for administrative action. Wolf was disciplined for his involvement with the Community Policing Fund. Captain Austino was not involved with the Community Policing Fund investigation, or the IA report issued by Riordan against Wolf, or the discipline issued to Wolf.

Based on the above, I **CONCLUDE** that respondent has failed to prove the allegations against Austino as set forth in paragraph 4 of the FNDA by a preponderance of credible evidence.

The MVR livestream (FNDA Schedule A, paragraph 5) alleged:

In another example, Captain Austino issued an order on or about December 12, 2016, that caused the activation of the live stream audio feature of the DVMS Pro MVR system in the police vehicles. When activated, the live stream audio feature of the system transmitted all sounds from inside the police vehicle via live stream to police department computers equipped to monitor the sound inside the vehicle, even in the absence of triggering events. Austino issued this order while admittedly knowing there had been numerous complaints and problems with the system in general and without detailed knowledge of how the system worked. Austino gave this order under circumstances where he knew, or should have known, that multiple officers had previously complained to chief Codispoti about activation of the live stream audio feature of the system, in response to which Chief Codispoti ordered that the live stream audio feed be deactivated. Austino further knew or should have known that thereafter, there had been intermittent cases of the live stream audio feature being found active and being shut down upon discovery. Austino further knew or should have known that the officers had threatened to take legal action if the live stream audio feature continued to be activated from time to time. Without regard for any of these circumstances, Austino gave an order which he described as simply "make it work" regarding the MVR system, which required re-activation of the live stream audio contrary to Chief Codispoti's prior order and with complete disregard for the expressed concerns by the officers in the department.

As set forth in the findings of facts, the MVR system, since its installation, had problems with the devices not recording audio. This was noticeable to Austino in early 2016 when he served in IA. The audio issues made investigations difficult and prevented 'meaningful reviews' of randomly selected officer pursuits to ensure staff are adhering to strict police pursuit protocol. Sgt. Fulcher was the technology sergeant and the point of contact when it came to the MVR and other technological issues. Wolf was equally

frustrated with the MVR audio issues and the system hampering their ability to conduct investigations where sound would normally be available and complained to Austino. Austino told Wolf to talk to Fulcher about his concerns and tell him to make it work. Austino did not tell Wolf to activate the live stream as he was not familiar with the software and did not know how to access it. On December 14, 2016, Austino received a call from Chief Codispoti telling him that Pacitto was in his office and upset about wiretapping. Austino then called Fulcher to figure out what the wiretapping allegation was in reference to, and Fulcher explained that they turned the MVR back on and now the live stream function was on, which upset officers.

Codispoti ordered Fulcher to turn the livestream off on December 14, 2016, while Pacitto and Cavagnaro were in the chief's office lodging their complaint.

On December 14, 2016, Pacitto reported to the prosecutor that members of the department reported that audio from several police vehicles were being livestreamed to VPD computers without the knowledge of the officers. Pacitto believed this was a violation of the NJ wiretapping law. Pacitto also filed a grievance with Chief Codispoti on December 14, 2016, which was denied by Chief Beu on January 7, 2017, indicating that Captain Austino's order to activate the microphones in all vehicles was already rescinded on December 14, 2016 (R-6).

Based on CCPO Detective Sgt. Henry's investigation, which included numerous interviews, First Assistant Prosecutor Shapiro determined that the investigation did not reveal evidence of criminal activity. A letter of declination indicating same was issued on April 4, 2017, and a VPD IA was initiated.

During Wolf's interview with the Cumberland County Prosecutor's Office on January 4, 2017 (P-25), Wolf explained that there was no wiretapping going on with the MVR issue and that he himself was frustrated by the "silent movie" video clips that he had to review in IA that were making it more difficult to investigate events that were recorded without audio. Austino ordered the live streaming function to be turned on, but he made clear in the interview that the purpose of the order was to get recordings, and the intent was never to listen to live conversation. Although the "nature of the system" permitted

officers to click onto the live feed of patrol cars, Wolf had never heard of anyone using the system for that function. Wolf admitted that they could have communicated the reasoning behind why the mics were turned on more clearly to the department, but there was “no malicious intent here . . . nobody was sitting in a dark room listening to people’s conversations.” Rather, Wolf and Austino “were trying to get an MVR system that the taxpayers of Vineland had spent a considerable amount of money on to work as it was intended by the manufacturer and as we were hoping it would work for us to create an audio and video record of police officers performing their duties.”

During his interview with the prosecutor’s office in regard to Austino, Wolf stated that “He is a very ethical and credible person. I would not believe he would [turn on the audio] intentionally to try and gain something. That’s completely out of character for him.”

There was no evidence and no testimony from anyone that anybody, including Austino, ever listened to the live stream audio or that anyone’s privacy rights were violated.

After reviewing the prosecutor’s investigation and interviewing Sgt. Fulcher, Officer Cavagnaro, Officer Sherban, and Sgt. Riordan determined that Austino’s order did not violate any Rules and Regulations of the VPD and recommended that Captain Austino be exonerated. Sgt. Riordan determined that Captain Austino had the authority to issue a second order activating the live stream audio in the patrol vehicles. This recommendation was reviewed and approved by Chief Beu, which was appropriate per the 2014 IAPP. (P-19.)

Based on the above, I **CONCLUDE** that respondent has failed to prove the allegations against Austino as set forth in paragraph 5 of the FNDA by a preponderance of the credible evidence.

The B.B. strip search matter (FNDA, Schedule A, paragraph 6) alleged:

As another example, on March 2, 2016, an individual named B.B. was arrested following a motor vehicle stop by VPD

officers on a drug-related offense. At the station house, B.B. was questioned by Officer Ryan Madden as to whether he was concealing drugs. In the course of that questioning, without any advance notice whatsoever to Madden, B.B. quickly dropped his pants and bent over, at which time Madden could observe a piece of clear plastic sticking out of B.B.'s buttocks in plain view. The station house commander, then-Lieutenant Pedro Casiano, being of the understanding that the drugs could be observed in plain view, conveyed to Madden that objects can be seized if they are in plain view. Casiano did **not** order a strip search. The drugs were subsequently obtained when B.B. agreed to voluntarily remove a clear plastic bag containing suspected crack cocaine and gave it to Officer Madden. In an IA investigation report completed by Captain Austino, Austino recommended charges to be lodged against officer involved in the incident, including Casiano relating to his supervision, but provided no reference or discussion as to any alleged untruthfulness of Casiano. Disciplinary charges were subsequently issued, which Casiano vehemently disputed, as it was his good faith belief that the plain view exception applied. Nevertheless, in the interest of concluding the matter, Casiano agreed to serve a ten-day suspension as to his supervision of the incident. Yet with full awareness that Casiano was never charged with, nor ever found guilty of, the independent disciplinary offense of untruthfulness, and with further awareness that Casiano was advancing through the agency to the point of threatening their autonomy and control, Beu and Austino perpetuated the utterly baseless claim that Casiano "lied" in connection with the Bey matter, all to undermine, discredit, and defame him as he sought to advance through promotional processes, and to further send a clear message that others seeking to advance would be met with similar consequences and intimidation.

The allegation here is that Austino perpetuated the 'utterly baseless' claim that Casiano lied in connection with the B.B. matter to undermine, discredit and defame him as he advanced through the promotional process. As set forth in the findings of fact above, this was not an 'utterly baseless' claim as there were inconsistencies noted in the IA reports by both Wolf and Austino regarding Casiano's statements. (R-33.)

Furthermore, City Solicitor Michael Benson, in an August 24, 2016, email to Mr. Tonetta (P-16) states:



There were some truthfulness questions concerning Lieutenant Casiano's denial of certain facts during his IA interview with Lieutenant Wolf. In any event, at some point Chief Beu offered to reduce it to a 15-day suspension and then I'm told a ten-day was apparently offered. I have not been involved in the reductions although I don't disagree with them. I think the degree of concern generated by this case was and probably still should be the fact of the unique nature of the policy violation in this case that could result in a nasty civil claim.

There was a meeting on February 17, 2017, attended by Austino, Wolf, Riordan, Chief Beu, and Benson to discuss what the officers in the B.B. matter were going to be charged with. Although there was a discussion about Casiano's truthfulness, Chief Beu did not wish to recommend a charge of untruthfulness and so Casiano was not charged with untruthfulness.

Also, an October 31, 2017, mediation letter submitted by City Solicitor Mike Benson, Esq., to Judge Curio (P-15) states in part:

Lieutenant Casiano attempts to suggest that he believed Madden had said the bag was somehow placed in the waistband of the subject's underwear. This is never referenced by anyone and conflicts with the numerous references in Madden's incident report to all three anal exposures, to the subject spreading his butt cheeks and Madden observing the bag sticking out of his anus. During the third exposure Madden is very specific and graphic. The subject stood up, pulled his pants down, bent over and spread his butt cheeks and Madden attempted to grab the plastic that was sticking out of the subject's anus to pull the controlled dangerous substance from his anal cavity . . . Sergeant Roberti further confirmed in his IA interview that Madden had approached him and Lieutenant Casiano with a specific account of the subject exposing a piece of plastic in the subject's anus. Lieutenant Casiano himself is seen in the station hallway video observing Madden's re-enactment of the subject's exposure. It is entirely disingenuous of Lieutenant Casiano to deny a fact that is so established by all other accounts.

Aside from the reference made by Austino's attorney in his federal civil complaint, there has been no evidence introduced that Austino and Beu 'perpetuated' the claim that Casiano lied, other than telling that to Gelfand during the course of their interview with him.

Respondent offered no testimony from Casiano in support of this allegation.

Casiano has suffered no adverse employment as he has advanced in the promotional process to the position of Deputy Chief and then Chief.

Based on the above, I **CONCLUDE** that respondent has failed to prove the allegations against Austino as set forth in paragraph 6 of the FNDA by a preponderance of the credible evidence.

The T.C. arrest (FNDA, Schedule A, paragraph 7) alleges:

On June 10, 2017, Captain Austino, while working on a street assignment, ordered the arrest of a citizen, T.C., for disorderly conduct after T.C. directed foul language towards police as they were attempting to clear an area. Reasonably perceiving that the order of arrest may have been misguided, or even unlawful, then-Sergeant Gregory Pacitto, who was present for the arrest, filed a "Critical Incident Sheet" outlining his concerns, prompting an IA investigation. Lieutenant Christopher Landi, who was also present for the arrest and viewed footage of the arrest afterwards, shared in Pacitto's concerns. Despite the good faith concerns raised by Pacitto and Landi, Austino was promptly exonerated without any interview. Pacitto's complaint was then converted into an investigation against Pacitto and Landi for improperly questioning Austino's authority and fabricating their complaints. In so doing, Pacitto and Landi were marked as having an IA investigation on their respective records, with Landi receiving a sustained charge for performance of duty, again sending a message throughout the agency that any such questioning would be met with consequences.

As set forth in the findings of facts, Austino was the subject of this critical incident report filed by Pacitto. Austino was not involved in the subsequent IA investigation as he was the target of the investigation. He was exonerated following the IA investigation.

There is no evidence suggesting that Austino had anything to do with the investigations of Pacitto or Landi.

Based on the above, I **CONCLUDE** that respondent has failed to prove the allegations against Austino as set forth in paragraph 7 of the FNDA by a preponderance of the credible evidence.

The FNDA also contains an additional 'catchall' paragraph at paragraph 8, which states "The actions of Austino as identified above, as well as those actions of Austino as set forth in Mr. Gelfand's 2021 "REPORT OF INVESTIGATION IN THE MATTER OF VINELAND WORKPLACE HARRASSMENT AND RETALIATION INVESTIGATION." (J-1, FNDA, Schedule A, paragraph 8.) However, this is improper as a disciplinary notice must "set forth the charges and statement of facts supporting the charges (specifications)." N.J.A.C. 4A:2-2.5(a). "Properly stated charges are a sine qua non of a valid disciplinary proceeding." Town of West New York v. Bock, 38 N.J. 500, 522 (1962). "'Plain notice' is the standard to be applied when considering the adequacy of disciplinary charges filed against public employees...These principles emanate from the concept of affording due process and fairness to proceedings which impact so significantly on an employee." Pepe v. Twp. Of Springfield, 337 N.J. Super. 94, 97 (App. Div. 2001). "It is elementary that an employee cannot legally be tried or found guilty on charges of which he has not been given plain notice by the appointing authority." Ibid. (quoting Bock, 38 N.J. at 522).

It is noted in respondent's summation that a great deal of the City's argument against Austino is that he allegedly failed to cooperate in and/or allegedly obstructed the City and/or Gelfand's investigation. However, Austino has not been charged with obstruction or insubordination and this is not contained as a specification in the FNDA.

It is well-established that the Civil Service Commission and the OAL only have jurisdiction to adjudicate disciplinary charges and specifications which were sustained at the departmental level hearing. Hammond v. Monmouth County Sheriff's Department, 317 N.J. Super. 199 (App. Div. 1999).

Manifestly, an appeal to the Merit System Board is from the final notice of disciplinary action issued by the appointing authority. The Civil Service Act mandates review only of the adverse decision of the appointing authority as stated in the final notice of disciplinary action, since that is what the employee appeals to the Board. To hold that the appointing authority, on appeal, is entitled to broaden the charges as determined on the local level, would be to surcharge the right to appeal with a cost which violates any decent sense of due process or fair play.  
[Id. at 206.]

Therefore, the only issues before me are those issues specifically set forth in the FNDA.

The purpose of the New Jersey Conscientious Employee Protection Act (CEPA), N.J.S.A. 34:19-1 to 34:19-14, is to protect and encourage employees who report illegal or unethical workplace activities. Abbamont v. Piscataway Twp. Bd. of Educ., 138 N.J. 405, 431 (1994). The statute of limitations for a CEPA claim is one year. N.J.S.A. 34:19-5.

To establish a prima facie case under CEPA, a plaintiff must establish: (1) the plaintiff reasonably believed the employer was violating a law, rule or a clear mandate of public policy; (2) the plaintiff performed a whistleblowing activity as defined by N.J.S.A. 34:19-3; (3) an adverse employment action was taken against them; and (4) a causal relationship exists between the whistleblowing activity and the adverse employment action. Dzwonar v. McDevitt, 177 N.J. 451, 462 (2003). "The mere fact that adverse employment action occurs after a complaint will ordinarily be insufficient to satisfy the plaintiff's burden of demonstrating a causal link between the two events." Robinson v. City of Pittsburgh, 120 F.3d 1286, 1302 (3rd Cir. 1997); Bowles v. City of Camden, 993 F.Supp. 255, 264 (N.J.D. 1998). Retaliatory conduct is defined as "the discharge, suspension or demotion of an employee, or other adverse employment action taken against an employee in the terms and conditions of employment." N.J.S.A. 34:19-2(e). To rise to the level of an adverse employment action, the retaliatory conduct must have a material impact on the terms and conditions of employment, such as a discharge, demotion, reduction in compensation or rank, or loss of benefits.

None of the City's witnesses have testified to having suffered an adverse employment action.

Since I have concluded that the respondent has failed to meet its burden of proof in establishing the allegations set forth in paragraphs 4, 5, 6, and 7 as set forth in Schedule A of the FNDA, Count I charging a violation of other sufficient cause for improper employment practices-retaliation and/or disparate treatment in violation of New Jersey and Federal employment laws is **DISMISSED**.

Count II charges Appellant with violating N.J.A.C. 4A:2-2.3(a)(9) Discrimination that affects equal employment opportunity as set forth in Schedule A. Since I have concluded that respondent has failed to prove the allegations against Austino set forth in paragraphs 4, 5, 6, and 7 of Schedule A, Count II is **DISMISSED**.

Count III charges Appellant with "Conduct unbecoming a public employee," N.J.A.C. 4A:2-2.3(a)(6) as set forth in Schedule A. "Conduct unbecoming a public employee" is an elastic phrase, which 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 Atlantic 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 police officer subjects him to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576-77 (1990). They 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." Township of Moorestown v.

Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). Maintenance of strict discipline is important in military-like settings such as police departments, prisons and correctional facilities. Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 50 N.J. 269 (1971); City of Newark v. Massey, 93 N.J. Super. 317 (App. Div. 1967).

Since I have concluded that respondent has failed to prove the allegations against Austino set forth in paragraphs 4, 5, 6 and 7 of Schedule A, Count III charging Austino with "Conduct unbecoming a public employee," N.J.A.C. 4A:2-2.3(a)(6) as set forth in Schedule A is **DISMISSED**.

Count IV charges Appellant with common law unbecoming conduct as set forth in Schedule A of the FNDA. Since I have concluded that respondent has failed to prove the allegations against Austino set forth in paragraphs 4, 5, 6 and 7 of Schedule A, Count IV is **DISMISSED**.

### **ORDER**

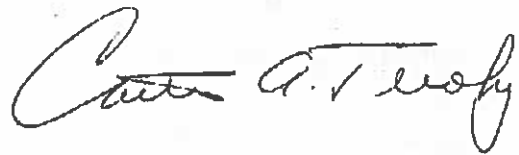
It is **ORDERED** that the charges and specifications made against the appellant set forth in the FNDA dated October 21, 2022, are not sustained. Appellant's appeal is **GRANTED** and the charges are **DISMISSED**.

It is further **ORDERED** that appellant's removal is **REVERSED**.

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.



February 5, 2024

DATE

CATHERINE A. TUOHY, ALJ

Date Received at Agency:

emailed 2/5/24

Date Mailed to Parties:

emailed 2/5/24

CAT/gd

**APPENDIX**

**WITNESSES**

**For petitioner**

Raymond Cavagnaro  
Jennifer Webb-McCrae  
Adam Austino  
Michael Benson

**For respondent**

Brian Armstrong  
Scott O'Neill  
Gregory Pacitto  
Richard Tonetta  
Todd Gelfand  
David Cavagnaro  
Christopher Landi  
Adam Shaw  
Leonard Wolf

**EXHIBITS**

**Joint**

- J-1 FNDA dated October 21, 2022
- J-2 PNDA with Amended Schedule A
- J-3 Initial PNDA served November 15, 2021
- J-4 AG IA Guidelines Copy, Internal Affairs Policy and Procedures, revised July 2014
- J-5 AG Internal Affairs Policy and Procedures, November 2022 version

**For petitioner**

- P-4 July 29, 2019, letter from Todd Gelfand to Harold Shapiro



- P-5 October 28, 2020, email from Todd Gelfand to Steven Sheffler
- P-6 November 17, 2020, letter from Prosecutor Jennifer Webb-McRae to Acting Chief Pedro Casiano
- P-11 Billing for Michael Benson re: Bey matter
- P-12 Barker, Gelfand, James & Sarvas' response to their first OPRA request
- P-15 October 31, 2017, Brief prepared by Michael Benson to Honorable Georgia M. Curio
- P-16 Email chain Michael Benson to Richard Tonetta dated August 24, 2017
- P-18 Email chain from Jennifer Webb-McRae to Michael Benson and Richard Tonetta and Colin Bell dated November 15, 2021
- P-19 Cumberland County Prosecutor Internal Affairs Investigation report dated June 24, 2022
- P-22 Daily Journal article titled "Vineland Police promote three officers" dated January 13, 2017, by Deborah M. Marko
- P-23 Letter from Harold B. Shapiro, First Assistant Prosecutor of Cumberland County to Michael E. Benson, Esquire dated July 27, 2020
- P-24 Vineland Police Department Personnel Order (effective date October 22, 2017)
- P-25 Complaint notification for Captain Austino
- P-26 July 29, 2022, letter to all counsel from Jennifer Webb-McRae re: adoption of Cavagnaro report
- P-27 Chart of Captain Assignments – VPD
- P-29 September 14, 2021, newspaper article re: Street Crimes Unit.

**For respondent**

- R-1 Report of Investigation in the Matter of Vineland Workplace Harassment and Retaliation Investigation, dated November 22, 2021, Correct Final
- R-2A Exhibits to Gelfand Report 1 of 2
- R-2B Exhibits to Gelfand Report 2 of 2
- R-3 VCPD-General Order-Mobile Video/Body Worn Cameras-Revised, dated November 10, 2016
- R-5 PBA-VCPD-2016.12.14b Grievance No. 2016-05
- R-6 Beu to Pacitto wiretap response, dated January 4, 2017

- R-7 17-35754\_Ajsanti\_1-1\_dp\_IA (Video MP4 format), dated June 10, 2017
- R-8 VCPD Critical Incident Sheet, dated June 13, 2017
- R-9 VCPD Request for Electronic Preservation, dated June 13, 2017
- R-10 Long to Beu Investigation, dated June 14, 2017
- R-11 Ex 26 PBA Local 266 v. Vineland, draft complaint dated November 2018
- R-13 Landi Metadata (Landi)
- R-26 VCPD-2 HR Policies
- R-27 VCPD-01 2018.5\_24 Go 2018 002 Rules and Regulations
- R-32 2017.1\_Webb-McRae to Beu-SODA Fund-Riordan IA 2017-0035
- R-33 2017.2\_VCPD Citizen Complaint Continuation-Austino-Beu Report
- R-34 Cumberland County IA Investigation report, dated April 5, 2017
- R-35 Email Chain \_PSU 16-0099, dated June 15, 2017
- R-36 VCPD Critical Incident Sheet, dated June 22, 2017, Wiretap Riordan-IA 2016-0257
- R-37 Austino to Beu-Compliant by Austino, dated June 30, 2017
- R-39 Tonetta to Duffy-Memo-Re: Vineland Police/Captain Austino, dated October 18, 2017
- R-41 VCPD Critical Incident Sheet-OPS Case #2A2017-0112-Cox-Landi, dated May 2018
- R-42 IA Case #2017-0112-VCPD Critical Incident Continuation Finely Cox Report
- R-43 IA Case #2017-0112-VCPD Critical Incident Continuation Riordan Cox Report
- R-44 VCPD Captain's Association Grievance 2018-01, dated August 4, 2018
- R-45 VCPD Captain's Association Grievance 201-01, dated February 14, 2019
- R-46 VCPD Captain's Association-Grievance 2019-02, dated July 17, 2019
- R-47 Gelfand to Shapiro Re: Vineland Police PBA 266/VPCA; HR Grievance/Cross-complaints, dated July 29, 2019
- R-48 Shapiro to Gelfand-Re: Vineland Police PBA 266/VPCA; HR Grievance/Cross-complaints, dated August 26, 2019
- R-49 Email Gelfand to Moore and Shapiro Re: Vineland Police PBA 266/VCPA; HR Grievance/Cross-complaints, dated September 3, 2019

- R-50 Webb-McRae CCPO to Tonetta-Re: Chief Rudy Beu-Misuse of Abuse of Authority, dated September 3, 2019
- R-53 Email Gelfand to Beu-R: Vineland Police PBA 266/VPCA; HR Grievance, dated September 9, 2019
- R-58 Webb McRae to Gelfand-Re: Vineland Police PBA 266/VPCA; HR Grievance/Cross-complaints, dated September 17, 2019
- R-62 Email Beu to Gelfand-Re: Response to VPCA Grievance 2019-1, 2019-2
- R-63 Email to Gelfand to Beau, Austino and Tonetta-Re" City of Vineland Internal Police Department Investigation
- R-65 Fox to Gelfand-Re: Captain Adam Austino, dated September 26, 2019
- R-66 Gelfand to Fox-Re: Captain Adam Austino, dated September 27, 2019
- R-68 Gelfand to Fox-Re: Captain Adam Austino, dated October 4, 2019
- R-69 Email Gelfand to Fox and Merrit-Re: Captain Adam Austino, dated November 4, 2019
- R-71 Email Gelfand to Fox-Re: Document Request post first interview and request for setup second interview; IMO CEPA complaints, dated November 22, 2019
- R-78 Austion v. City of Vineland, et al., filed complaint, dated February 3, 2020
- R-84 Email chain-Shapiro to Benson-Re: Release of VPD IA Files, dated May 22, 2020
- R-85 Henry to Gelfand-Re: Criminal Investigation (PSU-19-03180 dated May 27, 2020
- R-87 Guinan to Peterson-Re: Tod Gelfand, Edw. (PSU-19-0318) dated September 18, 2020
- R-88 Email Gelfand to Fox-Re: IMO Vineland/Captain Austino, dated September 21, 2020
- R-89 Email Gelfand to Alicea and Austino-Re: Directive Delivered September 30, 2020, dated October 1, 2020
- R-91 Email Gelfand to [sps63@comcast.net](mailto:sps63@comcast.net) (Sheffler) Re: IMP Capitan Austino/Vineland Police Department, dated October 28, 2020
- R-110 Email Scarpa to Pacitto-Re: Patrol Vehicle Audio Issues, dated December 14, 2016
- R-112 ProPhoenix Screenshot-Cox Incident

- R-113 Cox Incident-Report History
- R-116 David Cavagnaro 2016 emails PBA
- R-117 2016 PBA grievance
- R-118 Derogatory treatment grievance 2018
- R-119 Grievance and Responses, dated September 5, 2017
- R-120 BWC footage from Landi during Cox incident
- R-123 Special Order 2017-003 Interim MVR procedures
- R-124 Email thread between R. Tonetta and R. Pinizzotto, dated March 23, 2018
- R-125 Investigation file on the March 3, 2016, arrest and body cavity search of B.B.
- R-126 Transcript dated August 11, 2016-September 16, 2016, re: Internal Affairs Investigation Case No: 2016-46 Volume 1
- R-127 Transcript dated October 29, 2016-November 29, 2016, re: Internal Affairs Investigation Case No: 2016-46 Volume 2
- R-128 Transcript dated November 29, 2016-February 9, 2017, re: Internal Affairs Investigation Case No.: 2016-46 Volume 3
- R-134 Captain Austino Interview Audio Transcription
- R-135 Transcription of audio interview of Captain Austino
- R-140 Austino PBA email dated, October 27, 2016
- R-141 SCU Stats
- R-142 2016-029 Personnel Order
- R-143 Austino Order, dated December 14, 2016
- R-144 Complaint notification
- R-145 Shaw MVR, dated August 25, 2017