



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
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Barry E. Moscovitz
Acting Director and Chief
Administrative Law Judge

Candice Hendricks
Assistant Director

April 8, 2025

By E-mail: opra+request-74520-42b3a669@requests.opramachine.com

Marco D Navarro

Re: OPRA Request

Dear Requestor:

The Office of Administrative Law ("OAL") received your request under the Open Public Records Act on April 8, 2025. You requested:

"Final court decision of appeal of Docket No. CSV 8990-2023"

In response to your request, please see attached responsive records.

Sincerely,

/s/Candice G. Hendricks
OPRA Custodian/Assistant Director
Judicial Standards and Procedures



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 08990-23

AGENCY DKT. NO. 2024-498

**IN THE MATTER OF CARLOS PINA,
CITY OF UNION CITY, DEPARTMENT
OF PUBLIC SAFETY.**

Stuart J. Alterman, Esq., for appellant Carlos Pina (Alterman & Associates,
attorneys)

Joseph R. Marsico, Esq., for respondent City of Union City, Department of Public
Safety (O'Toole Scrivo, attorneys)

Record Closed: March 17, 2025

Decided: March 21, 2025

BEFORE **SUSANA E. GUERRERO**, ALJ:

STATEMENT OF THE CASE

Appellant Carlos Pina (Pina or appellant) appeals a thirty-five-day suspension issued by respondent City of Union City, Department of Public Safety.

PROCEDURAL HISTORY

The City of Union City, Department of Public Safety (City) served Pina with a Final Notice of Disciplinary Action (FNDA) dated August 24, 2023, for an incident that occurred on August 28, 2021, and his reporting of that incident.

The Civil Service Commission transmitted this matter to the Office of Administrative Law, where it was filed on September 8, 2023, for determination as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -23. An initial telephone prehearing conference was held on October 12, 2023. After several telephone conferences, appellant filed a Motion to Compel Discovery on or about February 13, 2024. The City opposed the motion and following oral argument on March 11, 2024, I denied the motion on March 27, 2024. The appellant filed a Notice of Motion for Interlocutory Review of my order denying the motion, and on or around April 11, 2024, the Civil Service Commission declined to review the interlocutory motion.

The hearing took place on August 26, 2024, and September 19, 2024. The parties requested a transcript of the hearing and were given an opportunity to file post-hearing briefs. After being granted several extensions, the OAL received the final brief on February 18, 2025. The record closed on March 17, 2025, upon receipt of one missing exhibit.

FACTUAL DISCUSSION AND FINDINGS OF FACT

Pina has been employed as a police officer with the Union City Police Department for approximately twenty-five years. On August 31, 2021, the Police Department's Internal Affairs Unit received a "Demeanor Complaint" about Pina. The complaint had been filed two days earlier by a civilian, Mr. Rydzyk, through Sergeant Nunez, who forwarded the complaint to Internal Affairs. Sergeant Nunez reported to Internal Affairs that Rydzyk came into headquarters and stated that Pina was in his personal vehicle taking stop signs and red lights, almost striking Rydzyk's vehicle, and that Pina was confrontational with him when he exited his vehicle.

Following an Internal Affairs investigation, the City charged Pina with violating several departmental rules and the regulation pertaining to “conduct unbecoming a public employee” for having an altercation with a member of the public while using profane language and threatening the civilian; refusing to give his name and badge number to the civilian when asked; and for being untruthful in his official report of the incident and during the formal statement taken by Internal Affairs. (R-1.)

Events of August 28, 2021

On the afternoon of August 28, 2021, Pina was driving his personal vehicle southbound on Palisade Avenue in Union City. He was en route to Union City Police Headquarters to start his shift, and he was in full police uniform.

Rydzyk was driving near Palisade Avenue and 47th Street and alleged that Pina took stop signs and red lights and almost struck Rydzyk’s vehicle. Although Pina denies this, while stopped at a red light at the intersection of Palisade Avenue and 45th street, Rydzyk, who was driving behind Pina, exited his vehicle, approached Pina’s window, and the two had an exchange before they continued driving down Palisade Avenue. While Pina only testified that Rydzyk was yelling at him for some unknown reason, it is likely that Rydzyk approached Pina at the red light to confront him about his driving.

Pina proceeded to drive southbound on Palisade Avenue, a one-way street, and Rydzyk drove behind him for several blocks. The record is inconclusive that Rydzyk tailgated Pina, as Pina testified, but Pina was under the impression that Rydzyk was following him, as he drove behind him for several blocks. Pina pulled over into a loading zone in front of 3700 Palisade Avenue, on the east side of the street, to allow Rydzyk to drive past him. About seven seconds later, Rydzyk parked on the west side of the street, at least one car’s-length behind Pina. When Rydzyk was parallel parking into that spot, he drove up until the front of his car was about even with the rear bumper of Pina’s car, and he then immediately reversed into the parking spot.

Even before Rydzyk finished parking, Pina exited his vehicle and charged across the street directly towards Rydzyk’s vehicle. Pina walked in front of traffic and confronted

Rydzyk by yelling at him before Rydzyk was even able to exit his vehicle. Rydzyk recorded the exchange on his cell phone when Pina approached his car, and he told Pina that he was filing a complaint. (R-16.) The cars were parked just outside City Hall's parking garage.

As heard on the recording, when Rydzyk told Pina that he was filing a complaint, Pina responded: "File what you want. Don't follow me." Rydzyk then tells Pina that he saw him blow a red light using his personal vehicle, and Pina responds by threatening Rydzyk: "You threaten me? I'll knock you the f*ck out, how 'bout that?" Rydzyk asks Pina: "Now you're threatening me?" Pina responds: "You're threatening me. You're following me." Rydzyk responds: "Oh, I'm following you? By coming to the police station? What's your badge number? What's your badge number?" Pina refuses to provide his badge number and curses at Rydzyk again. Specifically, Pina responds: "I don't gotta tell you sh*t. How 'bout that?" They were both shouting at each other on the street, in front of pedestrians and motorists.

Rydzyk then exits his car and walks towards the City Hall parking garage to file his complaint against Pina. Pina returns to his vehicle across the street, takes off his uniform shirt, leaving on a white t-shirt, and tosses the uniform shirt in his car while declaring to Rydzyk that he is off duty and not working. He then follows Rydzyk towards the parking garage.

While the two argue, Lieutenant Ricardo Ocasio (Ocasio) emerges from the parking garage. He heard arguing and yelling outside and then sees Pina when exiting the garage. When Rydzyk walks into the parking garage, and Pina approaches the garage entrance, Ocasio addresses Pina. Ocasio testified credibly that, in an attempt to de-escalate the matter, he told Pina to stop, to stop arguing, and he asked him what was happening.

A few seconds later, Rydzyk exits the parking garage and walks past Pina and Ocasio towards the front entrance of City Hall. As Rydzyk exits the parking garage, Pina confronts Rydzyk again and challenges him: "Don't, don't . . . Cash your chips, bro. If you got a big mouth, cash 'em." Rydzyk tells Pina that he has a "pretty big one too," and

that he does not respect nor deserve his badge. At City Hall, Rydzyk made a complaint about Pina, and Pina issued Rydzyk two motor vehicle summonses by mail.

Later that day, on his own accord, Pina submitted his own report to the Chief at the time. (R-3.) Pina reported that Rydzyk was following him closely, and that after he pulled over in front of 3700 Palisade Avenue, Rydzyk “pulled alongside of me and began to curse at me,” before proceeding to park. He also reported that he exited his car and approached Rydzyk “to see what his issue was,” that Rydzyk yelled at him, and that he asked for Pina’s identification number. He reported that he advised Rydzyk that he was not working and did not have to provide any information since he was off duty. (R-3.)

Internal Affairs Investigation

When Rydzyk’s complaint was forwarded to Internal Affairs, it was assigned to then-Lieutenant Willie Sierra (Sierra) for investigation. Sierra reviewed the report prepared by Pina on August 28. He also interviewed Rydzyk and obtained Rydzyk’s cell phone video and surveillance videos from the City. He also interviewed Ocasio; Sergeant Christopher Rengel (Rengel), who observed at least a portion of the exchange; a civilian bystander; and Pina.

During his interview with Internal Affairs, Pina stated that Rydzyk “pulled up next to [his] car” and started yelling profanities at him, and that Pina responded by asking him if he knew him and what his problem was. Pina reported to Sierra that, before Rydzyk parked his car, he shouted to Pina: “I’ll f*cking kick your ass. I’ll kill you.” Later in the interview, Pina repeated that when he pulled over in the loading zone, Rydzyk pulled up “right next to” him and was cursing and threatening him from his car before parking, and that Pina felt threatened. Again, Pina repeated that before parking, Rydzyk “got next to” him and said that he was going to kill him or kick his a**. Pina made these statements before viewing any surveillance video.

Sierra concluded that Pina was untruthful when he reported that Rydzyk pulled up next to him and threatened him. Sierra relied on the surveillance video in concluding that Rydzyk’s car was not next to, or alongside, Pina’s vehicle, and he noted that Rydzyk was

at least one vehicle-length behind Pina when he was parallel parking, that Pina's passenger-side and rear-passenger-side windows were both closed, and that Rydzyk had no opportunity to say anything to Pina. He noted that the videos do not show Rydzyk making any threats to Pina and that there is no justification for an officer to act towards a member of the public the way that Pina did here.

Sierra and Chief Anthony Faccini both testified that Pina was untruthful when he reported, about four separate times, that he felt threatened by Rydzyk. Sierra notes that Pina voluntarily approached Rydzyk, he approached without his weapon, and he did not call for backup. Faccini also pointed out that Pina was two blocks from headquarters when he pulled over and that if he felt threatened, he could have gone around the corner for assistance. Rather, he walked directly towards the alleged threat. Pina testified unconvincingly that even though he felt threatened, he approached Rydzyk's vehicle because he did not want Rydzyk to get the jump on him.

Both Sierra and Chief Faccini maintain that Pina was required to give his name and badge number when requested because he was in full uniform, even if he was off duty. Sierra also testified that Pina reported that he only unbuttoned his uniform shirt when he actually took it off, and Sierra suggested in his report that Pina did so to prepare to fight Rydzyk. Pina testified unconvincingly and nonsensically that he took off his shirt to de-escalate the situation, and that he thought that it was the right thing to do because Rydzyk did not seem to respect Pina's shirt or badge. Chief Faccini testified credibly that Pina's conduct, in yelling and cursing at a member of the public and pulling off his shirt, on the street, and in front of other members of the public, was inappropriate and does not put police officers in a good light.

Chief Faccini was the chief when the FNDA was issued. He determined that the violations reflected in the FNDA occurred here, and that a thirty-five-day suspension was appropriate. He considered Pina's disciplinary history in determining the penalty and noted that he had seven sustained infractions within a fifteen-month period for which he received three written reprimands, a four-day suspension, a two-day suspension, and oral discipline. The City's Director of Public Safety reviewed and signed the FNDA.

Pina denies that he violated any rule or regulation and essentially maintains that he was justified in his actions because he was reportedly tailgated, chased, and then threatened. He testified that he was not investigated “the correct way,” suggested that Lieutenant Ocasio should have acted differently, and he denies any wrongdoing on his part.

Based upon my examination of the surveillance and cell phone videos, together with the testimony the parties provided, and my assessment of its credibility, I **FIND** that, on August 28, 2021, Pina had an altercation with a member of the public; he yelled at him and used profane language; and he threatened the individual by telling him that he would knock him out. I also **FIND** that, while wearing his uniform, Pina refused to give his badge number when expressly requested by a civilian. I also **FIND** that Pina was untruthful in his official report of the incident and during his formal statement taken by Internal Affairs. Specifically, I **FIND** that Pina was untruthful when he reported that Rydzyk pulled up “alongside” or “next to” him and that he threatened, yelled, and cursed at Pina before parking. Rydzyk did not pull up “alongside” or “next to” Pina before parking his vehicle, as Pina claimed, and I did not find him at all convincing when he tried to explain that his use of the terms “alongside” or “next to” was a matter of interpretation, or that he had been misunderstood. I also **FIND** that Pina was untruthful when he reported that Rydzyk threatened and yelled profanities at Pina just before parking his car on Palisade Avenue because: the cars were never next to each other to allow them to have this exchange; there was insufficient time for Rydzyk and Pina to have the exchange Pina described given how quickly Rydzyk parked; Pina’s passenger-side windows were closed; there is no evidence on the surveillance videos that any such exchange took place prior to Rydzyk parking; and Pina’s testimony concerning this alleged exchange was not credible. When Rydzyk stopped his car prior to parking, the front of the car only came about even with Pina’s rear bumper, and he immediately backed up into the parking spot. There was simply insufficient time for Rydzyk and Pina to have the exchange described by Pina. Finally, I **FIND** that Pina was untruthful when he reported that he felt threatened by Rydzyk because: Rydzyk never threatened him; Pina’s actions and demeanor as seen on the surveillance and cell phone videos were inconsistent with those of a reasonable person, or of a twenty-year veteran, who actually believes he is in danger; and because Pina’s testimony that he felt threatened, and explaining why he approached and confronted

Rydzyk as he did, was not credible. Pina claims that he felt threatened to try to justify his aggression towards Rydzyk. Pina exited his vehicle and charged directly towards Rydzyk without taking any precaution whatsoever—even before Rydzyk finished parking. Pina’s testimony that he approached Rydzyk because did not want to be a “sitting duck” and allow Rydzyk to “get a jump on” him was not convincing. His explanations as to why he did not call for backup, take his weapon with him, or take any precaution when he approached Rydzyk if he felt threatened were also unconvincing and even nonsensical. At no time did Pina’s actions or demeanor appear to suggest that he may have felt threatened.

LEGAL ANALYSIS AND CONCLUSIONS

Public employees’ rights and duties are governed and protected by the provisions of the Civil Service Act, N.J.S.A. 11A:1-1 to 12-6, and the regulations promulgated pursuant thereto, N.J.A.C. 4A:1-1.1 to 10-3.2. However, public employees may be disciplined for a variety of offenses involving their employment, including the general causes for discipline as set forth in N.J.A.C. 4A:2-2.3(a). An appointing authority may discipline an employee for sufficient cause, including failure to obey laws, rules, and regulations of the appointing authority. N.J.A.C. 4A:2-2.3(a)(12).

In disciplinary cases, the appointing authority has the burden of both persuasion and production and must demonstrate by a preponderance of the competent, relevant, and credible evidence that it had just cause to discipline the employee and lodge the charges. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (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). The evidence must “be such as to lead a reasonably cautious mind to the given conclusion.” Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958).

The issue to be addressed here is whether a preponderance of the credible evidence establishes that the appellant’s actions constitute a violation of the charges set forth in the FNDA, and specifically whether his conduct was unbecoming a public employee and violated department policy and procedure. If so, the question to be

addressed is whether the violation warrants a thirty-five-day suspension or another penalty, if any.

Pina is charged with violating N.J.S.A. 4A:2-2.3(a)(6), conduct unbecoming a public employee. “Conduct unbecoming” is an “elastic” phrase that encompasses conduct that “adversely affects the morale or efficiency of [a governmental unit] . . . [or] which has a tendency to destroy public respect for [government] employees and confidence in the operation of [governmental] services.” Karins v. City of Atl. City, 152 N.J. 532, 554 (1998) (quoting In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960)). 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) (citing Asbury Park v. Dep’t of Civil Serv., 17 N.J. 419, 429 (1955)). I **CONCLUDE** that Pina’s conduct was unbecoming of a police officer, in violation of N.J.A.C. 4A:2-2.3(a)(6), when he confronted Rydzyk, and yelled, cursed, and threatened him. Pina’s conduct was also unbecoming when he took off his uniform shirt while shouting at Rydzyk on a public street and telling him that he was off duty, and then by pursuing him towards the parking garage, and confronting and challenging him again when Rydzyk exited the garage. Even if Rydzyk was driving closely behind Pina, or even tailgating him, and even though Rydzyk also shouted at Pina, Pina’s unnecessarily aggressive and unprofessional behavior was inexcusable.

Pina is also charged 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 standards of good behavior which devolve upon one who stands in the public eye as an upholder of that which is morally and legally correct. In re MacDonald, 2014 N.J. AGEN LEXIS 236 (May 19, 2014), adopted, Civil Serv. Comm’n (Sept. 3, 2014), <http://njlaw.rutgers.edu/collections/oal/>. I **CONCLUDE** that Pina’s conduct violated N.J.A.C. 4A:2-2.3(a)(12) not only because his interactions with Rydzyk were contrary to standards of good behavior, but because his actions also violated three agency Rules and Regulations for which he was charged. Specifically, I **CONCLUDE** that Pina violated 8:1.16, “Using rude or insulting language or conduct offensive to the public,” for cursing

and yelling at Rydzyk, and for approaching and challenging Rydzyk on the street in an unprofessional and offensive manner. I also **CONCLUDE** that Pina violated 8:1.63, “Refusal to give name and badge number when properly requested,” when Rydzyk asked for Pina’s badge number and Pina refused by responding: “I don’t gotta tell you sh*t. How ‘bout that?” There is no reason to believe that the request was not “properly” made, particularly since Pina was expressly told by Rydzyk that he was filing a complaint against him. Finally, I **CONCLUDE** that Pina violated 8:1.9 for “Knowingly and willfully making a false entry in any departmental report or record” given my findings that Pina was untruthful in his official report of the incident to the Chief, and during his formal statement taken by Internal Affairs when he claimed that Rydzyk threatened Pina by yelling “I’ll f*cking kick your ass. I’ll kill you,” when Rydzyk reportedly pulled up “next to” or “alongside” him, and when he reported feeling threatened by Rydzyk.

Finally, Pina is charged with violating 8:1.20, “Repeat violations of Departmental Rules & Regulations, or any other course of conduct indicating that a member has little or no regard for his/her responsibilities as a member of the police department.” I **CONCLUDE** that the respondent did not adequately demonstrate how Pina violated this provision of the Rules and Regulations, and specifically how Pina “has little or no regard for his responsibilities as a member of the police department.”

PENALTY

When dealing with the question of penalty in a de novo review of a disciplinary action against an employee, it is necessary to reevaluate the proofs and “penalty” on appeal based on the charges. N.J.S.A. 11A:2-19; Henry v. Rahway State Prison, 81 N.J. 571 (1980); W.N.Y. v. Bock, 38 N.J. 500 (1962). In determining the appropriateness of a penalty, several factors must be considered, including the nature of the employee’s offense, the concept of progressive discipline, and the employee’s prior record. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463. Pursuant to Bock, concepts of progressive discipline involving penalties of increasing severity are used where appropriate. See In re Parlow, 192 N.J. Super. 247 (App. Div. 1983). Depending upon the incident complained of and the employee’s past record, major discipline may include suspension, removal, or demotion. Bock, 38 N.J. at 522–24.

Police officers are different from other public employees and thus “are held to higher standards of conduct than other public employees.” City of Jersey City v. Jersey City Police Officers Benevolent Ass’n, 154 N.J. 555, 572 (1998); In re Att’y Gen. Law Enf’t Directive Nos. 2020-5 & 2020-6, 465 N.J. Super. 111, 147 (App. Div. 2020). 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.” Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). Thus, the Appellate Division has, more than once, affirmed the dismissal of a police officer for infractions that went to the heart of the officer’s ability to be trusted to function appropriately in his position. In re Herrmann, 192 N.J. 19, 35 (2007) (citing Cosme v. E. Newark Twp. Comm., 304 N.J. Super. 191, 206 (App. Div. 1997)).

The respondent seeks to impose a thirty-five-working-day suspension, which the City asserts is a reasonable, and arguably lenient, penalty given the nature of Pina’s offense and his long history of disregard for the Department’s behavioral standards. The City points out that Pina was disciplined seven times in the fifteen months prior to the incident with Rydzyk, and Chief Faccini testified credibly that he considered Pina’s disciplinary history in determining the discipline to be imposed here.

While Pina asserts that the proposed penalty is excessive, given the violations here, Pina’s disciplinary history, and his apparent inability or unwillingness to acknowledge any wrongdoing or convey any remorse, I find no reason to disturb the City’s proposed suspension. Although Pina has received numerous reprimands over the years, and served two-day suspensions in 2008, 2013, 2018, and 2020, and a four-day suspension in 2020, he has never received any major discipline. I **CONCLUDE** that the penalty proposed by the City, a thirty-five-working-day suspension, is reasonable. Pina handled himself in an unprofessional and unnecessarily aggressive manner with a civilian in the middle of the street near headquarters. Chief Faccini was rightfully concerned about public perception given Pina’s conduct in yelling and cursing at a civilian, pulling off his uniform shirt, and essentially causing a scene while others watched. Even considering Pina’s twenty-five years of service as an officer, and the various awards and accolades he has received over the years, the City’s proposed suspension is reasonable.

ORDER

Accordingly, it is **ORDERED** that the charges against the appellant as identified above, with the exception of the charge relating to Rules 8:1.20, be and hereby are **SUSTAINED**, and that the appellant serve a thirty-five-working-day suspension.

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. 52:14B-10.

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

March 21, 2025
DATE



SUSANA E. GUERRERO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

jb

APPENDIX

Witnesses

For Appellant:

Ricardo Ocasio
Christopher Rengel
Magali Melendez
Carlos Pina

For Respondent:

Willie Enrique Sierra
Anthony Faccini

Exhibits

For Appellant:

A-1 – A-8 Not in Evidence
A-9 Internal Affairs Interview of Lieutenant Ocasio

For Respondent:

R-1 FNDA
R-2 Internal Affairs Investigation Report
R-3 PD11 Form by Pina
R-4 Internal Affairs Complaint
R-5 Demeanor Complaint email dated August 31, 2021
R-6 Email dated September 8, 2021
R-7 Administrative Investigations Only form
R-8 Principal Acknowledgment signed by Pina
R-9 Complaint Summons
R-10 Pina's IA record
R-11 Police Department Manual
R-12 Not in Evidence

- R-13 Video from City Hall Camera, south-facing
- R-14 Video from City Hall Camera, north-facing
- R-15 Not in Evidence
- R-16 Cell phone video recording by Rydzyk
- R-17 Audio clip of Pina's IA Interview
- R-18 Audio clip of Rydzyk Interview
- R-19 Video of Palisade and 47th Street