

**SETTLEMENT AGREEMENT AND GENERAL RELEASE
BETWEEN POLICE OFFICER SGT. THOMAS SCHIERER
AND THE BOROUGH OF LAVALLETTE,
COUNTY OF ~~SOMERSET~~, STATE OF NEW JERSEY
*OCEAN***

This is a Settlement Agreement and General Release (the "Agreement") between the Borough of Lavallette, (the "Borough"), a municipal corporation of the State of New Jersey, with its principal offices located at 1306 Grand Central Avenue, Lavallette, New Jersey 07835 and Thomas Schierer ("Officer Schierer"), a member of the Lavallette Police Department, whose principal address is 65 Grand Central Ave, Lavallette, NJ 08735.

WHEREAS, Officer Schierer is employed as a Police Officer by the Borough and currently holds the rank of Sergeant; and,

WHEREAS, following review by the Ocean County Prosecutor's Office, the Borough would be entitled to bring disciplinary charges (the "Disciplinary Charges") against Officer Schierer seeking the termination of his employment in a Preliminary Notice of Disciplinary Action ("PNDA"); and,

WHEREAS, Officer Schierer could be charged with Statutory Misconduct (*N.J.S.A.* 40A:14-147), Job Abandonment, various Civil Service rules and regulations violations, including but not limited to Incompetency, Inefficiency and Failure to Perform Duties, Inability to Perform Duties, Chronic or Excessive Absenteeism, Conduct Unbecoming a Public Employee and Other Sufficient Cause as to alleged violations of the Lavallette Police Department Rules and Regulations (the "Disciplinary Charges") that are related to his fitness for duty as a Police Officer and his inability to perform his duties; and,

WHEREAS, Officer Schierer also sustained an injury in 2018, which resulted in significant injuries and consequences which have significantly impaired his ability to perform his duties as a Lavallette Police Officer; and,

WHEREAS, Officer Schierer underwent a fitness for duty evaluation with the Institute for Forensic Psychology ("IFP") regarding his fitness for duty as a Police Officer; and,

WHEREAS, said dispute is not yet resolved in favor of any party and the Borough believes, in good faith, that Officer Schierer could not then, and cannot now, perform his duties ~~and Officer Schierer agrees with the Borough's position;~~ and,

WHEREAS, Officer Schierer intends to make an application to the Police and Fire Retirement System (PFRS) for a disability retirement, in which case the Borough would take all action necessary to effect or support such application; and,

WHEREAS, the Borough and Officer Schierer desire to settle fully and finally any and all disputes between Officer Schierer and the Borough ; and,

WHEREAS, the Borough and Officer Schierer desire to set forth all of the terms and conditions of their agreement in this Agreement and General Release; and,

THEREFORE, in consideration of the promises contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which each of the parties acknowledge, the Borough and Officer Schierer agree as follows:

1. Based on the pending internal investigation and the conduct underlying the internal investigation, the Borough believes that Officer Schierer may be considered as totally and/or permanently disabled from performing his job responsibilities as a Police Officer. As a result, Officer Schierer agrees to take all action reasonably necessary to effectuate a disability retirement with the Board of Trustees, Police and Firemen's Retirement System, State of New Jersey, Department of Treasury, Division of Pensions, (the "PFRS") effective on or before September 1, 2021 or as otherwise set forth herein, hereinafter referred to as the "Retirement Date".
2. The parties recognize that only the PFRS has the authority to approve Officer Schierer's retirement as a disability retirement and to establish the effective date of that retirement if granted (the "Retirement Date").
3. Officer Schierer shall deliver to the Lavallette Borough Administrator and Lavallette Chief of Police a signed copy of this Agreement within seven (7) days of being provided a copy hereof and an Irrevocable Letter of Resignation from the Lavallette Police Department, without an effective date ~~effective September 1, 2021~~. The Irrevocable Letter of Resignation will be held in abeyance pending Officer Schierer's disability retirement application with PFRS. However, said letter shall become effective as provided below ~~on September 1, 2021~~ as to his status as a Lavallette Police Officer, regardless of whether, or when, PFRS acts upon his disability retirement application.
4. Officer Schierer shall file and perfect a disability retirement application with PFRS within thirty (30) calendar days of the date of his signing of this Agreement, which disability retirement application shall specify an effective Retirement Date of no later than September 1, 2021.
5. The Borough will take no action against Officer Schierer while his disability retirement application is pending with PFRS, up to and including September 1, 2021. This will include placing any action to prosecute ~~initiate~~ a Preliminary Notice of Disciplinary Action (PNDA) or other disciplinary proceedings against Officer Schierer in abeyance and continuing him on an employment status of "administrative leave of absence with pay" pending the outcome of his disability application up to, but not including, September 1, 2021. However, the Borough will order Officer Schierer to attend a fitness for duty examination.
6. ~~Irrespective of the date that the PFRS approves Officer Schierer's application for a disability retirement effective on the Retirement Date, or retroactively approves Officer Schierer's disability retirement on an earlier or different date, Officer Schierer will separate from his employment at the end of business on August 31, 2021 and shall be deemed to have resigned in~~

good standing. If he has any rights and entitlements authorized by law and pursuant to the contract between the Borough and the PBA Local 372 upon retirement, that will not come into effect until and if Officer Schierer is actually granted a retirement by PFRS.

6. In the event that the PFRS has not acted upon Officer Schierer's disability retirement application as of September 1, 2021, then on September 1, 2021 Officer Schierer's status with the Borough will change to administrative leave without pay; provided, however, that the Borough will continue to pay Officer Schierer's enrollment in the Borough's medical benefits program and Officer Schierer shall only pay that percentage of such medical benefits program as was paid by him while on the Borough's regular payroll.

7. In the event the PFRS denies Officer Schierer's disability retirement, the Irrevocable Letter of Resignation from the Lavallette Police Department effective ~~September 1, 2021~~, shall become effective upon notice by the PFRS to Officer Schierer and the Borough without further action by either party, and Officer Schierer shall be deemed to have separated from his employment at the end of business on the date of such notice August 31, 2021 and shall be deemed to have resigned in good standing with any rights and entitlements authorized by law and pursuant to the contract between the Borough and the PBA Local 372, which shall not come into effect until Officer Schierer is actually granted a retirement by PFRS.

8. In the event that the PFRS has neither approved nor denied any retirement application by the Borough for Officer Schierer prior to ~~September 1, 2021~~, January 1, 2022, i.e., has taken no action or issued no decision, the Irrevocable Letter of Resignation from the Lavallette Police Department in good standing shall become effective without further action by either party at the end of business on ~~August~~ December 31, 2021 and Officer Schierer shall be deemed to have resigned in good standing. If he is ultimately granted retirement, he will be entitled to any rights and entitlements authorized by law and pursuant to the contract between the Borough and the PBA Local 372 for such employees who have resigned in good standing.

~~9. In the event that the PFRS does not approve any retirement application by the Borough for Officer Schierer prior to September 1, 2021 and Officer Schierer attempts to challenge, contest, repudiate, appeal and/or otherwise disregard the Irrevocable Letter of Resignation from the Lavallette Police Department in any tribunal or court of any kind or jurisdiction, a PNDA shall be served upon Officer Schierer and his status will change from administrative leave without pay to suspended without pay and a Loudermill hearing regarding such status will be conducted while such disciplinary action is pending.~~

~~10. Officer Schierer will remain in the status of administrative leave with pay pending the outcome of his disability retirement application or through the end of the business day of Tuesday, August 31, 2021, whichever comes first.~~

9. Officer Schierer agrees that he waives all timeliness defenses with respect to any disciplinary proceedings, disciplinary charges and/or any disciplinary hearing concerning such disciplinary charges. Officer Schierer acknowledges that the Borough is not otherwise obligated

to withdraw any disciplinary action pending against him or to take any and/or all action reasonably necessary to effectuate a disability retirement.

10. Officer Schierer agrees that the undertakings set forth above on behalf of or by the Borough provide a significant and substantial part of the consideration for entering into this Agreement.

11. The Borough and Officer Schierer understand and agree that the administrative leave of absence with pay **and the administrative leave without pay** referenced above is a paid leave of absence during which time Officer Schierer will not accrue any further holiday pay, vacation pay, sick pay and/or other paid benefit pursuant to the applicable collective bargaining agreement during this period, but will receive or be entitled to health, medical, life and/or other insurance benefits pursuant to the applicable collective bargaining agreement. Officer Schierer agrees that the benefits on behalf of or by the Borough provide a significant and substantial part of the consideration for entering into this Agreement.

12. The Borough agrees to pay Officer Schierer any monies owed to him for unpaid sick leave (other than donated sick leave), and/or that he has accrued prior to the effective date of this Agreement in the event that Officer Schierer is awarded an disability retirement as of the Retirement Date pursuant to the collective bargaining agreement between the Borough and PBA Local 372. Otherwise, Officer Schierer is not eligible for such payment. Officer Schierer acknowledges and agrees that, except as provided in this Section, Officer Schierer is not entitled to anything further from the Borough in terms of compensation per the aforementioned contract by way of cash payout.

13. The Borough shall not be liable for costs or the payment of any of Officer Schierer's attorney's fees. Officer Schierer agrees that, except as provided in this Agreement, neither he nor his legal counsel are entitled to, nor shall either or both seek, any further compensation from ~~any of the Releasees~~ **the Borough, its officials, whether elected or appointed, or its agents or employees** (as defined in Paragraph 7) for any other amounts, damages, costs, disbursements or attorneys' fees in connection with any of the matters encompassed in this Agreement, or for any aspect of Officer Schierer's employment with the Borough, including, but not limited to, the retirement from that employment. The covenants in this Section apply to all claims accrued up to the date Officer Schierer executes this Agreement and do not apply to claims arising out of any breach of this Agreement.

14. Officer Schierer acknowledges that, in his execution of this Agreement, he is effecting a knowing and voluntary waiver of any claims, liabilities and/or causes of action against the Borough of Lavallette and the Lavallette Police Department, their officials (elected and/or appointed), officers, employees, representatives, assigns, successors and designees, (hereinafter collectively referred to as the "Releasees") which Officer Schierer now has or hereafter can, shall or may have, including but not limited to claims under the New Jersey Law Against Discrimination ("NJ LAD"), the American's with Disabilities Act ("ADA"), 42 U.S.C. § 1983, *et seq.*, the New Jersey Civil Rights Act, *N.J.S.A. 10:6-2, et seq.*, and/or any other statute, rule, regulation or common law cause of action including, but not limited to any prerogative writ action. The

covenants in this Section apply to all claims accrued up to the date Officer Schierer executes this Agreement and do not apply to claims arising solely out of a breach of this Agreement.

15. Officer Schierer agrees that no disparaging, negative or derogatory remarks, written, oral or otherwise, regarding the Borough or any other Releasors, or any part or phase of the employment relationship, shall be disclosed to any party, except as may be required by law or court order. Officer Schierer shall refer all prospective employment inquiries to the attention of the Chief of Police or his designee. In response to any prospective employment inquiries, the Borough agrees to solely provide Officer Schierer's dates of employment, salary and position/title history during the employment. The Borough will not release any other information to a non-law enforcement potential employer. The Borough will only release information to other law enforcement agencies in accordance with the then existing Attorney General Guidelines. All reference to this disciplinary matter will be expunged from Officer Schierer's personnel file, but shall remain in any Internal Affairs file under the then existing Attorney General Guidelines.

16. Officer Schierer and the Borough agree to enter into this Agreement with the intent and understanding that it shall serve as a mutual release of all claims between Officer Schierer and the Borough.

17. Officer Schierer understands that he is executing the Agreement freely and voluntarily. The Borough and Officer Schierer agree, and Officer Schierer understands, that he does not waive any rights or claims that may arise after the date he executes this Agreement. Officer Schierer and the Borough agree that any modifications to this Agreement, whether material or immaterial, must be made within seven (7) calendar days of signing the Agreement in writing to the Borough's Attorney at his law office.

18. Should any provision of this Agreement be declared or determined by a court of competent jurisdiction to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected and the illegal or invalid part, term, or provision shall be deemed not to be a part of this Agreement. The remainder of the Agreement shall remain in full force and effect. If, however, the Release contained in this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, Officer Schierer agrees, promptly upon the request of the Borough, to execute a new release that is valid and enforceable. In the absence of a valid, enforceable release, this Agreement shall be null and void.

19. This Agreement shall not be construed in favor of or against any party on the basis that the party did or did not author this Agreement. It is intended that this Agreement shall be comprehensive in nature and shall be construed liberally to affect its purposes.

20. This Agreement shall not in any way be construed as an admission on the part of the Borough and/or the Releasees that the Borough and/or the Releasees wrongfully or in any manner or fashion whatsoever violated any law and/or obligation to Officer Schierer.

21. Officer Schierer releases, acquits, gives up and forever discharges any and all claims and rights which he may have against the Borough of Lavallette and the Lavallette Police

Department and any and all of their officials (elected and/or appointed), officers, employees, representatives, assigns, successors and designees, up to the time of complete execution of this Agreement by all parties. This releases any and all claims, including those of which Officer Schierer, his family, designees, representatives and assigns are not aware and those not mentioned in this Agreement. This Agreement applies to claims resulting from anything which has happened from Officer Schierer's first (1st) date of application for employment with the Borough of Lavallette and the Lavallette Police Department through the date of complete execution of this Agreement by both parties. Officer Schierer specifically releases the following claims:

ANY AND ALL CLAIMS FOR DAMAGES, WHETHER KNOWN OR UNKNOWN AT THIS DATE, ARISING FROM OR RELATING TO ANY AND/OR ALL PORTIONS OF HIS APPLICATION FOR EMPLOYMENT, AND/OR HIS EMPLOYMENT WITH THE BOROUGH OF LAVALLETTE AND LAVALLETTE POLICE DEPARTMENT, AND/OR ANY DISCIPLINARY CHARGES FROM OFFICER SCHIERER'S FIRST (1st) DATE OF APPLICATION WITH THE BOROUGH OF LAVALLETTE AND THE LAVALLETTE POLICE DEPARTMENT DOWN TO THE PRESENT TIME AND THE DATE OF ANY REINSTATEMENT TO HIS POSITION AND/OR TERMINATION FROM HIS POSITION.

22. Officer Schierer hereby releases, acquits and forever discharges the Borough of Lavallette and the Lavallette Police Department from any and all actions or causes of action, suits, debts, claims, complaints, contracts, controversies, agreements, promises, damages, cross-claims, claims for contribution and/or indemnity, claims for costs and/or attorney's fees, judgments and demands whatsoever, in law or equity, which Officer Schierer ever had, now has, or may have, as of the date of this Agreement, including, but not limited to, any claim, demand or action under the Age Discrimination in Employment Act, (ADEA), the Civil Rights Act of 1964, as amended and supplemented, as well as the Civil Rights Act of 1871 (42 U.S.C. 1981 *et. seq.*), as amended and supplemented, the Civil Rights Act of 1991, as amended and supplemented, the Equal Pay Act, the Americans with Disabilities Act, the Employee Retirement Income Security Act (ERISA), the Fair Labor Standards Act (FLSA), the Occupational Safety and Health Act (OSHA), the New Jersey Law Against Discrimination (NJLAD), the New Jersey Conscientious Employee Protection Act (CEPA), any and all State and/ or Federal workers compensation laws, any and all State and Federal wage and hour laws and State and Federal family leave laws and any and all other applicable laws, Federal and/or State, as well as any Borough of Lavallette and/or Lavallette Police Department laws, rules, regulations, orders and/ or policies. Furthermore, Officer Schierer waives any and all relief/ claims not explicitly provided for herein.

23. Officer Schierer further releases the Borough of Lavallette and the Lavallette Police Department from any and all damages, whether known or unknown at this date, arising from or in any way relating to his application for employment and/or employment with the Borough of Lavallette and the Lavallette Police Department and the procedures followed by the Borough of Lavallette and the Lavallette Police Department in processing Officer Schierer's application for employment and/or any other employment matters (judicial/quasi-judicial/administrative/contractual) or any existing, pending and/or planned actions against the Borough of Lavallette and the Lavallette Police Department arising from Officer Schierer's application for employment and/or employment with the Borough of Lavallette and the Lavallette Police Department from the

date of his initial application for employment, up to and including the date of the fully execution date of this Agreement, including, but not limited to, attorney's fees, pursuant to 42 U.S.C. §1983 and/or 42 U.S.C. §1988 and/or *N.J.S.A. 10:5-1 et seq.* and/or any other applicable Federal or State laws, statutory or common law.

24. Officer Schierer agrees not only to release, acquit and forever discharge the Borough of Lavallette and the Lavallette Police Department from any and all claims which arose from Officer Schierer's application for employment and/or employment with the Borough of Lavallette and the Lavallette Police Department that he could make on his own behalf, but also those which have been or may be made against the Borough of Lavallette and the Lavallette Police Department by any other person, entity, group or organization on his behalf which are known or should have been known. Officer Schierer specifically waives any right to become, and promises not to become, a member of any class in any case in which any claim is asserted against the Borough of Lavallette and the Lavallette Police Department, involving any event that has occurred on or before the date of this Agreement.

25. The Borough of Lavallette and the Lavallette Police Department affirm that, as of the date of execution of this Agreement by all parties, they have no knowledge of any pending class action against it to which Officer Schierer could be a potential class member as a result of his application for employment and/or employment with the Borough of Lavallette and the Lavallette Police Department.

26. This Agreement is binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, executors, administrator, successors and assigns.

27. This Agreement shall be deemed to have been made in New Jersey and shall be interpreted, construed, and enforced pursuant to the laws of the State of New Jersey.

28. This Agreement sets forth the entire agreement between the Borough and Officer Schierer, fully supersedes any and all prior agreements or understandings between the parties and may not be modified orally and only modified in writing as noted by executor of the Borough and Officer Schierer.

29. The Borough and Officer Schierer may execute this Agreement in counterparts. Each counterpart, when executed will be deemed to be an original, all of which together will constitute one Agreement. The parties agree that faxed or PDF scanned counterpart signatures render this Agreement binding.

30. This Agreement is subject to formal approval and ratification by the Borough's governing body and by the Borough's attorney.

31. Officer Schierer acknowledges that he discussed the terms of the resolution of these disciplinary charges with his attorney and that his attorney has answered any questions he had regarding this matter to his full satisfaction. Officer Schierer also agrees and acknowledges that he has been fully, fairly and adequately represented by his attorney in this matter and that he is satisfied with his representation.

32. OFFICER SCHIERER EXPRESSLY ACKNOWLEDGES, REPRESENTS, AND WARRANTS THAT HE HAS CAREFULLY READ THIS AGREEMENT; AND, THAT HE FULLY UNDERSTANDS THE TERMS, CONDITIONS, AND SIGNIFICANCE OF THIS AGREEMENT; AND, THAT HE HAS HAD AMPLE TIME TO CONSIDER AND NEGOTIATE THIS AGREEMENT; AND, THAT HE HAS HAD A FULL OPPORTUNITY TO REVIEW THIS AGREEMENT; AND, THAT HE IS ABLE TO MAKE AN INFORMED DECISION AND IS NOT PSYCHICALLY OR MEDICALLY OR MENTALLY INCAPACITATED SO THAT HE IS ABLE TO RENDER AN INFORMED DECISION; AND, THAT HE HAS EXECUTED THIS AGREEMENT VOLUNTARILY AND KNOWINGLY, WITH THE ADVICE OF COUNSEL.

THOMAS SCHIERER


THOMAS SCHIERER

6/30/21

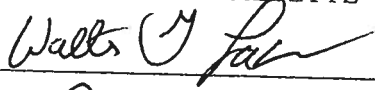
DATE

WITNESS

DATE

BOROUGH OF LAVALLETTE

By:



8-5-2021

DATE



WITNESS

08/05/2021
DATE