



STATE OF NEW JERSEY

**DECISION OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Rudolph Beu,
Vineland, Police Department

CSC Docket No. 2021-1646
OAL Docket No. CSV 04706-21

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ISSUED: SEPTEMBER 10, 2025

The appeal of Rudolph Beu, Police Chief, Vineland, Police Department, six-month suspension and demotion to Deputy Police Chief, effective February 26, 2020, on charges, was heard by Administrative Law Judge Catherine A. Tuohy (ALJ), who rendered her initial decision on June 23, 2025. Exceptions were filed on behalf of the appointing authority and a reply to exceptions was filed on behalf of the appellant.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions and reply, as well as relevant portions of the testimony, the Civil Service Commission (Commission), at its meeting on September 10, 2025, adopted the ALJ's Findings of Facts and Conclusions of Law and her recommendation to reverse the six-month suspension and demotion.

Upon its *de novo* review of the ALJ's thorough and well-reasoned initial decision as well as the entire record, including the exceptions and reply filed by the parties, most of which do not require extensive comment, the Commission agrees with the ALJ's determinations regarding the charges, as they were predominantly based on the ALJ's credibility determinations of testimony of the witnesses. In this regard, the Commission acknowledges that the ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. *See Matter of J.W.D.*, 149 N.J. 108 (1997). "[T]rial courts' credibility findings . . . are often influenced by matters such as observations of the character and demeanor of the witnesses and common human experience that 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(c)*; *Cavalieri u. Public Employees Retirement System*, 368 *N.J. Super.* 527 (App. Div. 2004).

In this case, when the matter was initially presented to the Commission at its August 13, 2025, meeting, the Commission expressed no concerns with the vast majority of the ALJ's findings. However, it did note some concern with the ALJ's credibility determinations in regard to the incidents involving the appellant and Ronald DeMarchi. As such, the Commission requested staff to present a summary of the relevant portions of the hearing testimony as to those incidents. Upon review of that summary, the Commission finds nothing to discredit the ALJ's credibility determinations regarding those incidents. Moreover, the Commission finds nothing in the exceptions that persuasively demonstrates that any of the ALJ's other credibility determinations, or her findings and conclusions based on those determinations, were arbitrary, capricious or unreasonable. As such, the Commission adopts those determinations as well as the findings and conclusions made therefrom.

Since the suspension and demotion have been reversed, the appellant is entitled to six months of mitigated back pay, benefits, and seniority at his Police Chief pay rate pursuant to *N.J.A.C. 4A:2-2.10*. He is also entitled to unmitigated differential back pay from August 26, 2020 to the date of actual reinstatement to Police Chief.¹ Moreover, as the appellant has prevailed, he is entitled to reasonable counsel fees pursuant to *N.J.A.C. 4A:2-2.12*.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, per the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay or counsel fees are finally resolved.

ORDER

The Civil Service Commission finds that the action of the appointing authority in suspending and demoting the appellant was not justified. The Commission therefore reverses those actions and grants the appeal of Rudolph Beu.

The Commission orders that the appellant be granted six month of back pay at his prior Police Chief pay rate, as well as benefits, and seniority. That amount of back

¹ Although, the appellant's personnel record indicates that he has been removed on unassociated disciplinary charges, effective August 31, 2023. If that is the case, his unmitigated differential back pay would cease on that date.

pay is to be reduced and mitigated as provided for in *N.J.A.C. 4A:2-2.10*. Proof of income earned, and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision. The Commission further orders unmitigated differential back pay from August 26, 2020, to the date of his reinstatement to Police Chief.

Additionally, the Commission 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.

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 10TH DAY OF SEPTEMBER, 2025



Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 04706-21

AGENCY DKT. NO. N/A

**IN THE MATTER OF RUDOLPH BEU,
CITY OF VINELAND.**

Colin Bell, Esq., for appellant (Hankin Sandman Palladino Weintrob & Bell,
attorneys)

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

Steven Barse, Associate Solicitor, City of Vineland

Record closed: May 7, 2025

Decided: June 23, 2025

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

STATEMENT OF THE CASE

Appellant, Rudolph Beu, Police Chief for the City of Vineland, appeals his 180-day suspension and demotion to the position of Deputy Chief pursuant to a Final Notice of Disciplinary Action (FNDA) (31-B) dated April 26, 2021, for violations of N.J.A.C. 4A:2-2.3(a)1-Incompetency, inefficiency or failure to perform duties; N.J.A.C. 4A:2-2.3(a)2-Insubordination; N.J.A.C. 4A:2-2.3(a)6- Conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)7-Neglect of duty; N.J.A.C. 4A:2-2.3(a)11-Other sufficient cause; and General

Order 2018-002 Rules and Regulations: 3.1 General Conduct – (3.1.1 - Performance of Duty; 3.1.2 – Action Off-Duty; 3.1.3 -Obedience to Laws, Ordinances, Rules and Written Directives; 3.1.6 – Insubordination; 3:1.7 – Providing False Information; 3:1.8 – Conduct Toward Other Department Employees; 3:13.5 – Truthfulness; 4.2 Department Authority to Discipline – (4:2.1 – Discipline Authority; 1. Under the provision of N.J.A.C. 4A:2-2.3, employees, regardless of rank, shall be subject to disciplinary action for: a. Incompetency, inefficiency or failure to perform duties; b. Insubordination; f. Conduct unbecoming a public employee; g. Neglect of duty); and Violation of N.J.S.A. 40A:14-147 – Truthfulness/Misconduct. (J-1).

The incidents giving rise to the charges and the dates on which they occurred were specified as follows:

“During April 2017, while at a bar in advance of attending a Philadelphia Phillies game, Vineland Police Officer Ronald DeMarchi had conversation with Chief Beu concerning promotions from a civil service list for sergeants’ promotions. Chief Beu commented to the effect that he was going to promote or thinking of promoting “T-Bag,” referring to Officer T. Hall who was one spot ahead of DeMarchi on the civil service list for promotion to sergeant. Chief Beu then made a comment to Ronald DeMarchi in the presence of, and heard by Ronald DeMarchi’s wife Suzette DeMarchi, suggesting that Beu would seek to get DeMarchi promoted to Sergeant “if [Chief Beu] could have DeMarchi’s wife, Suzette,” referring to DeMarchi allowing Beu to have sex with DeMarchi’s wife, Suzette. Chief Beu again made a comment to Ronald DeMarchi, in or about the end of August or beginning of September 2017, to the same effect, i.e., that Beu would try to get DeMarchi promoted if Beu could have DeMarchi’s wife Suzette. When DeMarchi did not react well to that comment, Chief Beu made a comment along the lines of “how about Brooke,” referring to DeMarchi’s pre-teen daughter.

On July 18, 2019, during telephone conversation with Todd J. Gelfand, Esquire, whom Chief Beu knew to have been assigned by the City of Vineland as special counsel to investigate complaints of retaliation made to city administration to include the DeMarchi comments, Chief Beu untruthfully denied having made either comment. Again, on December 18, 2019, when interviewed by the Cumberland County Prosecutor’s office, Chief Beu untruthfully denied having made “the DeMarchi comments.” During the December 18, 2019, interview, Chief Beu also untruthfully

denied ever having referred to Officer T. Hall by the nickname "T-Bag," a term that is a highly offensive and profane sexual reference.

Starting on or about June 26, 2019, Special Counsel Gelfand advised Chief Beu that for purposes of performing the City of Vineland investigation into certain human resource complaints of retaliation and harassment, to include complaints by the Police Benevolent Association (PBA) Local 266 as well as complaints by Captain Adam Austino, Special Counsel Gelfand needed to review relevant Vineland Police Department Internal Affairs (VPD IA) files and other police department materials. From June 26, 2019, through and including the date of the issuance of these charges, Chief Beu never allowed for Special Counsel Gelfand to have access to the VPD IA files and other non-internal affairs materials for review. Chief Beu insubordinately did not comply with orders and directives issued by Public Safety Director Alicea, requiring Chief Beu to provide access to Special Counsel Gelfand the files by certain dates, or to itemize any objections and explain the basis, in response to written orders and directives by Public Safety Director Alicea throughout January and February 2020 to date.

Officer Joshua Sheppard is the father of a child through his relationship with Officer Kimberly Beu and, as such, is the father of Chief Beu's grandchild. Accordingly, Chief Beu had a direct relationship conflict of interest in his intercession with the disciplinary action originally proposed against Officer Joshua Sheppard, with that intercession, resulting in a reduced disciplinary penalty for Officer Sheppard.

Chief Beu has had a direct conflict of interest in having undertaken the conduct of review of numerous requests by Public Safety Director Alicea for certain investigative materials related to allegations of police misconduct, some of which have implicated Chief Beu.

On December 18, 2019, when interviewed by the Cumberland County Prosecutor's Investigation Staff, Chief Beu falsely testified that "he had no influence over his daughter, Kimberly Beu, being assigned to the Juvenile Unit."

FNDA dated April 26, 2021. (J-1, Schedule A.)

Appellant denies he was guilty of any misconduct and seeks to be reinstated to his position of police chief.

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

PROCEDURAL HISTORY

On February 26, 2020, respondent issued a Preliminary Notice of Disciplinary Action (PNDA) (31-A) setting forth the charges and specifications made against the appellant (J-2). The PNDA was amended on March 2, 2020. (J-3.) On June 15, 2020, a second amended PNDA was issued. (J-4.) Following a nine-day departmental hearing, the respondent issued a Final Notice of Disciplinary Action (FNDA) (31-B) on April 26, 2021, sustaining the charges in the preliminary notice and suspending appellant for 180 days beginning February 26, 2020, through August 25, 2020, and demoting appellant to the position of deputy chief. (J-1.) Appellant filed an appeal on April 29, 2021, and the matter was transmitted by the Civil Service Commission Division of Appeals and Regulatory Affairs to the Office of Administrative Law (OAL) where it was filed on May 25, 2021, for a hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to 15; N.J.S.A. 52:14F-1 to 13.

Numerous telephone status conferences have been conducted throughout the course of this matter. On November 4, 2022, an order was entered denying appellant's motion for summary decision. A Prehearing Order was entered November 18, 2022.

While the instant disciplinary matter was pending before the undersigned, respondent served Beu with an additional FNDA dated October 21, 2022, seeking his removal as police chief effective November 15, 2021. Beu filed a direct filing removal appeal with the OAL on October 31, 2022. The matter was assigned to the Hon. Kathleen M. Calemme, ALJ, who conducted a hearing and issued an initial decision dated December 8, 2023, reversing Beu's removal. The Civil Service Commission issued a Final Agency Decision on January 17, 2024, adopting Judge Calemme's finding of facts and conclusions of law and her recommendation to reverse the removal. The Commission ordered appellant to be immediately reinstated to his permanent position and receive back pay, benefits and seniority, as well as counsel fees.

While the direct filing removal appeal was pending, this disciplinary matter before the undersigned was held in abeyance. After the Civil Service Commission issued its final decision on January 17, 2024, a conference call was conducted in this case on January 29, 2024, and new hearing dates scheduled.

Although hearings were conducted on May 29, May 31, June 4 and June 10, 2024, no verbatim transcript is available due to the malfunction of the Court smart recording system. A Statement of Proceedings in Lieu of Transcript was prepared pursuant to N.J. Court Rule 2:5-3(f), following an August 13, 2024, Zoom conference with counsel to reconstruct the record for the four hearing dates that a verbatim transcript was not available. The Proposed Joint Statement of Trial Testimony submitted September 3, 2024, was admitted into evidence as joint exhibit J-9.

On August 16, 2024, an order was entered denying third party CCPO's motion to quash Vineland's June 5, 2024, subpoena for PSU 19-0150 and PSU 19-0203 and granting in part CCPO's motion to quash Vineland's June 14, 2024, subpoena for PSU 19-0318, with the exception that CCPO was to provide Vineland with a copy of the audio/video recording of the December 18, 2019, Beu interview, with CCPO and Vineland consenting to a confidentiality order protecting certain investigative materials from disclosure. A Consent Confidentiality Order was signed by the parties and Cumberland County Counsel and entered on September 4, 2024.

Continued hearings were conducted on September 9, September 25, September 30, October 21, October 28, October 29, October 30, November 21, December 10, 2024, January 9 and January 10, 2025.

Following the close of respondent's case on October 29, 2024, Mr. Bell made an oral application for a directed verdict in favor of appellant as to the Josh Sheppard charges and as to the rules and regulations charges regarding Kimberly Beu, pursuant to the 45-day rule. Mr. Cook opposed the application, and I reserved the decision on the motion, pending the conclusion of the hearing and submission of closing briefs.¹

¹ This decision hereby disposes of the motion.

February 12, 2025, was scheduled for the final hearing date with respondent intending to call Special Agent Nicholas Tranchitella of the U.S. Department of Homeland Security as a rebuttal witness. Mr. Cook submitted a letter on January 23, 2025, to Homeland Security requesting permission to speak to Agent Tranchitella and present him as a witness in this case. By letter, dated February 6, 2025, the U.S. Attorney's office declined to authorize the release of the information for the reasons set forth therein. (R-229.) The testimonial portion of the hearing closed and the hearing date of February 12, 2025, was converted to a status conference wherein it was agreed that the parties would submit closing briefs within sixty days of receipt of the last transcript. The record remained open and closed on May 7, 2025, following receipt of closing summations.

FACTUAL DISCUSSION AND FINDINGS

Testimony

Counsel submitted a Proposed Joint Statement of Trial Testimony (J-9) for the hearing dates of May 29, May 31, June 4, and June 10, 2024, for purposes of R. 2:5-3(f), given that the audio of the testimony from those dates was not recorded due to a malfunction of the Court smart recording system. The Proposed Joint Statement of Trial Testimony represents the best efforts of the parties to reconstruct the record under these circumstances and represents the best collective memory of the testimony based on available notes and documents of counsel. (J-9.)

Harold Shapiro testified on behalf of the respondent. The parties have stipulated his testimony in J-9. Shapiro is the First Assistant Prosecutor for Cumberland County. The County Prosecutor's Office ("CCPO") has the overall responsibility to see that the police departments within the county comply with the IAPP, including its confidentiality requirements. Shapiro is familiar with the various versions of the IAPP. (J-6; J-7; J-8.) J-6 at 42 sets forth the conditions for the release of Internal Affairs (IA) files. Section 9.6 in both the December 2019 and December 2021 version of the IAPP governs confidentiality. Municipal police departments are required to follow CCPO's directives concerning law

enforcement and internal affairs. Todd Gelfand and Mike Benson were not hearing officers under the IAPP confidentiality provisions.

Shapiro testified that the Vineland Director of Public Safety is not authorized to direct the release of IA files or summaries of files. Alicea could request the release of confidential information, but he could not direct anyone to release confidential information without a court order for the release of files. Shapiro believed that Alicea should not have directed Triantos to release Sheppard's IA file or a summary of it.

On July 29, 2019, Gelfand wrote a letter to Shapiro regarding his request for authorization to review IA files for his investigation. Gelfand had previously accessed files because he was defending the city in the Phillip White litigation. Shapiro responded on August 22, 2019, (R-10) stating that the CCPO shall not direct the Vineland Police Department ("VPD") to release any documents to Gelfand. Shapiro explained himself further in R-15, stating that the CCPO did not seek to get involved in the "labor grievances, cross-complaints, and civil litigation involving the Vineland Police Captains Association (VPCA), the PBA, and the City of Vineland Administration." Shapiro also wrote in this letter that "the law enforcement executive officer may authorize access to a particular file or record for good cause." Shapiro testified that he was not prohibiting Beu from producing or releasing IA files to the city, only that the CCPO was not going to direct him to release the files.

Shapiro wrote to Tonetta on October 4, 2019, (R-32) indicating that the CCPO would investigate the matters referenced in Shapiro's letter. Generally, if criminal prosecution was declined, then CCPO would provide documentation of the matter to the employer for administrative proceedings. For a chief law enforcement officer, the prosecutor's office does both criminal and administrative investigation.

Pursuant to the letter of March 12, 2020, from Jennifer Webb-McRae to Deputy Chief Pedro Casiano, the CCPO superseded the Vineland Police Department's IA function as of March 12, 2020. (R-68.) Chief Richard Necelis, who would communicate with Benson and brief Shapiro, was designated to oversee the VPD IA function. On March 25, 2020, Benson had requested VPD IA files for Gelfand's investigation. On March 27,

2020, Shapiro informed Benson that Necelis would deliver the VPD IA files to him. (R-78.)

On May 15, 2020, Benson sent a letter to the prosecutor indicating that the March 27, 2020, CCPO letter only permitted the release of files to counsel for the City defending federal civil actions filed by Beu and Austino. (R-81.) Benson explained that this restriction of production to counsel made it impossible for Benson to effectively confer with Gelfand and to prepare for Beu's departmental hearing before hearing officer Judge Batten. Thus, Benson requested to release the files to Gelfand as well. On May 22, 2020, Shapiro approved Michael Benson to release IA files for Gelfand's human resources investigation. (R-83.)

Shapiro never had any conversations with Beu regarding the subject matter of these charges. The CCPO did not issue any directive to Beu to release files. The CCPO did not release the files until Gelfand signed the attestation drafted by Benson. The good cause standard only applies to the law enforcement executive; the CCPO did not need to find good cause to release the IA files.

Shapiro was not copied on R-152 and was not sure if he had seen this letter before.

Misael Candelario testified on behalf of the respondent on May 29, 2024. The parties have stipulated to his testimony. (J-9.) Candelario is currently a lieutenant with the Vineland Police Department and has served in the IA unit since February 2018.

Candelario was familiar with personnel and assignment orders at the VPD. Candelario was also familiar with Kim Beu, an officer at VPD, and with Chief Beu's alleged involvement in her appointment to the juvenile program. Candelario was aware that Chief Ron Cuff was investigating that issue and provided documents Cuff requested in relation to the investigation. (R-138; R-139.) Exhibits R-120, R-121, R-122, and R-123 were Personnel Orders regarding Kim Beu.

The personnel order at Exhibit R-124 assigned Kim Beu temporarily to the juvenile unit, effective June 25, 2017. This order was issued by Captain Finley and approved and

signed by Chief Beu. By operation of this order, Kim Beu was relieved of duty and temporarily assigned to the juvenile unit.

Effective September 3, 2017, Kim Beu was transferred back to her permanent position through the personnel order R-125, which was signed and approved by Chief Beu. This order indicated that Kim Beu was being assigned light duty on Platoon 2 after her temporary assignment.

On October 31, 2017, Captain Matthew Finley sent an email to all sworn officers announcing openings in specialty unit assignments for 2018. (R-200.) Candelario had previously seen these types of announcements before. Candelario was aware of the "Chief's Rule," an unwritten rule of thumb since 2005 from former Chief Codispoti stating that to be eligible for specialty unit assignments, an officer must have at least three years of experience, which could include military service. The Chief's Rule was not contained in any general or standing order, or written rule or regulation.

Candelario interpreted the Oct. 31 announcement to mean the opening was for January 1, 2018. This announcement included the juvenile unit and required applications to be submitted by November 24, 2017. Finley followed up with an announcement indicating that sergeants could also submit interest in specialty units. (R-201.) Candelario was a sergeant at this time and would have read this announcement.

On February 22, 2018, Captain Bowers sent an email to all officers announcing openings in the juvenile unit and notifying interested individuals that an email response was required by March 9, 2018. (R-130.) This email did not include any requirement that officers must have three years of service to apply. Candelario could not recall any announcements before the announcement done on February 22, 2018, that did not include the three-year requirement.

R-131 was a personnel order, revised February 23, 2018, indicating that Kim Beu was unassigned/temporarily not in service. This order was both issued and approved by Chief Beu. Felipe Laboy was listed in this order indicated as being transferred from

Platoon 1A to 1B, but the order did not indicate whether he was on light duty or off work. The order did not list Laboy as out-of-service.

Effective April 8, 2018, Personnel Order 2018-004 (R-132) transferred Kim Beu from unassigned status to the juvenile unit. This order was issued and approved by Chief Beu. Laboy was listed as transferred from Patrol 1B to the juvenile unit.

Kim Beu's appointment as of March 1, 2018, would not have satisfied the Chief's three-month rule. However, Candelario also testified that Kim Beu had three years of experience at the time of her transfer to the juvenile unit.

Laboy's schedule as shown in the VPD's scheduling system for this time frame indicates that Laboy received sick pay in March 2018 and vacation pay in April 2018. (R-202.) Laboy was out of work for approximately five months prior to his assignment to the juvenile unit. His transfer was effective on the same date as Kim Beu's transfer, but Laboy started work in the unit later due to being out on sick at the time of his transfer, and then on vacation time because he ran out of sick time.

Kimberly Beu testified on behalf of the respondent and the parties stipulated to her testimony. (J-9.) Kim Beu is Rudy Beu's daughter. Before being hired as a patrol officer for the VPD in March 2015, Kim Beu worked as a civilian dispatcher. On June 25, 2017, Kim Beu was assigned to the juvenile unit on a temporary basis as a light duty assignment while she was expecting until the end of the summer of 2017. This personnel order was approved by her father. (R-124.)

On September 3, 2017, Kim Beu was assigned to light duty on Patrol B, 3:30 p.m. shift, on dispatch. (R-125.)

Kim Beu was familiar with the Chief's Rule, which meant that a person needed three years of experience before being accepted for a specialty unit. This was a common practice.

She never told anyone in the VPD that her father had promised her the juvenile unit. Kim Beu was interested in the juvenile unit because she knew Shane Harris from working the PAL when she was younger. Harris was in the juvenile unit when she had worked there.

On October 31, 2017, Matthew Finley issued a notice for applications for specialty units for 2018, including the juvenile unit. (R-200.) At the time of this notice, Kim Beu did not meet the requirement for three years of service. Per R-126, Kim Beu put in for the juvenile unit on November 11, 2017. This was the only application she submitted for the juvenile unit, and the only application she gave Cuff for the purposes of his investigation. At the time she submitted this email, she did not meet the three-year requirement of the Chief's Rule, as she noted in her email. Kim Beu also noted in this email that she was going on maternity leave, and that when she returned in late March/early April 2018, she would have over three years and would be eligible for the juvenile unit. When Kim Beu submitted her November 11, 2017, application, Lene Bowers was not yet her captain. Before Bowers was promoted to Captain in January 2018, Bowers was a lieutenant running the juvenile unit.

Kim Beu went on maternity leave on December 26, 2017. While she was out, Adam Austino forwarded her and Chief Beu about the PBA's disability insurance policy. (R-129E.)

On February 22, 2018, Bowers sent a notice asking for applications to the juvenile unit. (R-130.) This notice did not include any three-year minimum requirement. The next day, Chief Beu issued and approved a personnel order for Kim Beu making her unassigned/temporarily not in service and the order also transferred Felipe Laboy between patrol units. (R-131.) Kim Beu never responded to Bowers's email.

On April 4, 2018, Kim Beu was transferred from unassigned status to the juvenile unit by personnel order issued and approved by Chief Beu. (R-132.)

On April 9, 2018, Kim Beu returned to duty and went right into the juvenile unit.

Later, CCPO Detective Cuff interviewed Kim Beu. (R-141). Just prior to this interview, Kim Beu texted Rudy Beu. (R-203.) Chief Beu asked to speak with Kim Beu when she returned. (R-203.) During this interview with Cuff, Kim Beu told Cuff that she had had a conversation with Bowers and another supervisor, Shane Harris, about applying for the juvenile unit. She told Cuff that Harris and Bowers had told her she did not have the three years. She told Cuff that after the conversation with Harris and Bowers, she told her dad the same thing: that she did not have the three years for the position. She never told Cuff during this interview that she had applied for the juvenile unit before Bowers's February 22, 2018, email. She told Cuff that her father knew that she was being considered at that point.

Kim Beu left the VPD because it had become toxic and political, and it was more stressful and not enjoyable.

Brad Marchesano testified for the respondent. The parties stipulated to his testimony. (J-9.) Marchesano served eighteen years with the VPD, including working with Kim Beu when she was a patrol officer. He is a field training officer.

In 2017, Marchesano was present for a conversation with Kim Beu when she stated that her father was going to put her into the juvenile unit. Marchesano could not recall the day or month of this conversation, although he believed it was early in the year, before she went on maternity leave. Marchesano believed there was a witness to this conversation but could not remember who.

Marchesano owns a pizza business with Ron DeMarchi. DeMarchi did not ask Marchesano to testify at the hearing.

Matthew Finley testified on May 29, 2024, and May 31, 2024, for the respondent. The parties have stipulated to his testimony. (J-9.) Finley retired from his position as VPD Captain in 2018. After Finley retired, he worked as City Chief of Personnel, where he had no oversight over police department matters.

On October 31, 2017, Finley issued an announcement for specialty unit openings for 2018, which included a three-year requirement for eligibility. (R-200.) Finley had put out several notices for open positions before and included the Chief's Rule in each announcement "as [he] was directed by the Chief at the time."

This Oct. 31, 2017, announcement included the juvenile unit, which is not a light duty assignment. R-201 is a follow-up sent to supervisors, issued a few minutes after R-200, indicating that sergeants could also apply for specialty units. Finley does not recall sending these announcements during Cuff's later investigation, since he did not have access to his police department emails after retiring. IT recovered an email from Kim Beu submitting her Nov. 11 application for the juvenile unit, so that Finley could forward it to Cuff, which Finley did on December 2, 2019. (R-126.) Kim Beu had sent this application to Finley, Adam Austino, and Rudy Beu. Beu would have known who had applied for the position.

Throughout this time, Finley and Austino were advocating for and recommending Felipe Laboy to be assigned to the juvenile unit in the 2018 assignment process. Finley felt that Laboy was the best person for the job. Laboy had been promised the position before and did not get it, and Laboy did a lot of work with youth, including youth sports. Finley told Cuff that the Chief makes the final call, and that he had told Beu that Laboy would be perfect, but that Chief Beu chose his daughter. Finley was sure he had had multiple conversations with Beu about the specialty units. There were numerous staff meetings in 2018, including all command staff, including the chief, about assignments in 2018. Finley did not recall Chief Beu objecting to Kim Beu being placed in the juvenile unit. Finley also testified Beu was apprehensive about Kim being placed in juvenile because he was afraid, she would "get messed with."

Exhibit R-128 is a series of text messages by Finley regarding Kim Beu from January 23, 2018. Finley claimed it was not clear that these were authentic text messages with Pacitto. Finley suggested that he was not sure that the "he" in his message "he lied right to my face yesterday" was referring to Rudy Beu, even though Finley had referenced Rudy Beu in texts just seconds before this message. In another text in this series, Finley said "Im done with it...ant and i talked for 40 minutes...we cant

figure it out...only thing i can come up with is he is causing drama...so kim being slipped into juvenile is unnoticed due to all other shit.”

Matthew Finley was called again to testify on behalf of the petitioner on October 29, 2024. After retiring as a police captain with the Vineland Police Department in 2018, Finley returned to employment with the city in 2019 as Chief of Personnel and Labor Relations. In this position, he was the right-hand person for the Business Administrator, CFO, and Rick Tonneta in the solicitor’s office as a kind of coordinator of their offices and departments.

Finley was familiar with Ron DeMarchi and had hundreds of conversations with him about DeMarchi’s desire to be promoted. DeMarchi was on the list for their civil service department, and the time was coming for the list to expire in roughly 2017. Almost two or three times a week, DeMarchi would ask Finley to reach out to Mayor Fanucci, with whom Finley was very friendly, to see if Finley could help DeMarchi get promoted so he would not have to retest.

Finley remembered a conversation with DeMarchi and Beu in Beu’s office during this time, in 2017. Finley had walked into Beu’s office to talk about police business, and Beu was by himself. Beu’s secretary, Stephanie Adams, was right outside the door and Finley saw her when he walked into Beu’s office. Finley had conversations in Beu’s office frequently, and they would always have the door open. Finley had been speaking with Beu when DeMarchi came in. The door was open. DeMarchi began speaking about how his son was getting ready to go to high school and how DeMarchi wanted his son to go to St. Augustine Prep, which Finley’s son attended. According to Finley, DeMarchi did not want his son to have to take the entrance exam. Finley told DeMarchi his son had to take the test and that he would talk to some people. Finley told DeMarchi to stop being so cheap, that DeMarchi was going to get promoted at some point, that his wife is going to get a huge pay raise after coming back to Vineland School District, and that the money he would save at the school for college is going to pay for itself. With respect to the promotion, Beu just said that DeMarchi was going to be fine, there were going to be promotions, and not to worry about it.

Beu's office had a desk with two chairs in front. The front of Beu's desk was almost at the halfway point of his office between the back wall and the door. Stephanie Adams or anyone coming down the hallway would be visible from Beu's office. Finley and DeMarchi had sat in one of the two chairs, with their backs to the door and Adams.

Finley did not remember how long the conversation lasted, but Beu was very particular about one thing in his daily routine: going to lunch. So, the three of them got up and left through the side entrance of the police station while still talking. They went out to Plum Street, where DeMarchi's truck was parked with DeMarchi's kids in it. Finley distinctly remembered that DeMarchi told his son to look out the window and give Captain Finley puppy dog eyes to help you get into the prep. Finley reiterated that no one can get in without taking the test but told him not to worry about it and he'd be fine. DeMarchi's daughter was also there. They talked for a couple more minutes and then walked away. At no time during this conversation did Finley hear Beu say anything like "If I can have your wife, you'll get promoted." Finley also never heard Beu say anything like "If I can have your daughter, you'll get promoted." If Finley had heard a comment like this, he "one million percent" would have objected. Finley has known Beu since he was in college. They had the type of relationship where Finley could have told Beu if something was wrong or inappropriate.

Finley learned some time in 2019 that DeMarchi was making certain allegations about this meeting from 2017.

When Finley was later called upon to give an interview to the prosecutor's office, he told Bob Dickenson, business administrator for the city, who told him to talk to Tonetta. Tonetta told Finley the interview was about "this whole DeMarchi thing" and that Finley was the smoking gun as the third person who possibly heard this conversation. Finley told Tonetta there was no smoking gun: this never happened. Tonetta told Finley "Well, you know, Rudy jokes a lot, you know, there's ways to answer questions," and Finley responded "Yeah, truthfully. That's the only way to answer questions." Finley left and told Dickenson he had talked to Tonetta and was leaving. Finley told Dickenson he was telling the truth that it never happened, and if it had, Finley would not have tolerated it. Finley

left to go to the prosecutor's office. Finley never told Ron Cuff of the prosecutor's office about this conversation with Tonetta or feeling uncomfortable or pressured.

Gregory Pacitto testified for the respondent and the parties have stipulated to his testimony. (J-9.) Pacitto is currently a police captain at the Vineland Police Department. Pacitto and Finley exchanged a series of text messages (R-127, R-128) which Pacitto authenticated as true and accurate copies.

Lene Bowers testified for the respondent and the parties have stipulated to her testimony. (J-9.) Bowers is a former captain in the VPD and is now retired. She was promoted to captain in January 2018. Before she was captain, Bowers was a lieutenant in the services unit, which was also in charge of the juvenile unit.

On February 22, 2018, Bowers issued an email seeking officers interested in the juvenile unit at the direction of Chief Beu. (R-130.) That was the procedure, and she only sent those types of notices when instructed by Beu to do so. Beu did not tell her why he wanted Bowers to send the February 2018 email announcing the positions. Bowers would not have made the decision to add officers to the juvenile unit. Because she was promoted to captain in January 2018, Bowers would not have sent an earlier announcement.

Bowers was on the distribution list for R-200 notifying officers of the openings in the special units. The date for calculating qualifications under prerequisites was January 1, 2018. Bowers did not know why two emails were sent for the juvenile unit; there was no reason to send two announcements for the same position. Her email did not include the three-year requirement under the Chief's Rule. Bowers did not know why she did not include the requirement, but it was one of the first announcements she sent after being promoted, and she did the same thing in another email about an assignment to the traffic unit. Bowers believed she just forgot to include the requirement. Bowers testified that she did not leave out the reference to the Chief's Rule in the email to manipulate the process for Kim Beu. Bowers had no recollection of whether Kim Beu had three years of service.

Bowers always lets her sergeants pick assignments for the specialty unit because they are the ones who had to work with them every day. Command staff including Chief Beu, Austino, Finley, and Bowers, talked all the time about assignments and transfers. Bowers was not part of the chief's inner circle like Finley and Austino were. Bowers could not recall any conversation with Finley about who should be appointed. Bowers did not recall Chief Beu ever telling her that he did not want his daughter to be in the juvenile unit.

Bowers had a discussion with Harris at some point about having a female in the juvenile unit. Shane Harris, who was in charge of the unit, wanted a female officer. Harris initially wanted Anne McCormick, but McCormick was first on the sergeant's list so that would not work because McCormick would have to move out of the unit immediately upon promotion. Kim Beu was Harris's second choice, since Kim Beu had worked in the PAL program and had prior experience with the juvenile unit, and Bowers did not object. Kim Beu was Harris's choice, and female, so Bowers approved of her. The most important thing to Bowers was that the juvenile unit needed a female officer for doing female arrests and for the purpose of mentoring females in high school. Bowers wanted diversity in the unit that reflected the population being served. Harris was the only one who wanted Kim Beu in the juvenile unit, but he did not say whether Chief Beu told Harris that he wanted Kim Beu to go into the juvenile unit.

Bowers was sure that she probably discussed with Kim Beu her interest in the juvenile unit position, but she could not recall how many conversations she had with her. Bowers did not recall Kim Beu saying that she had applied for the position in response to Captain Finley's email a few months earlier, or that she had said she would not have the three years of experience until the end of March/early April.

Chief Beu approved the appointment of both Laboy and Kim Beu in the juvenile unit. Rudy Beu never attempted to influence Bowers' decision regarding the juvenile unit. He never asked her to select Kim Beu, and no one came to her on his behalf asking that Kim Beu be selected for the unit. Bowers never heard that Chief Beu wanted his daughter to be in the juvenile unit. Bowers testified that she did not care for Chief Beu and that she would not do him any favors even if he asked, but she did not hold that against Kim Beu when Harris selected her.

Laboy and Kim Beu were transferred together to fill the two openings at the same time, but Laboy actually started working in the juvenile unit later, because he was still out sick at the time of the transfer in April 2018. The transfers occurred in April 2018 because of staffing issues and because patrol had priority. They were not delayed to benefit Kim Beu.

Steven Triantos testified for the respondent and the parties have stipulated to his testimony. (J-9.) Triantos has been the deputy chief of the VPD since 2022. He has worked for the VPD for twenty-three years. His prior duties included working in the IA unit.

Triantos conducted an investigation involving Sergeant (Sgt.) Adam Shaw and Officers Josh Sheppard and Elisandra Rivera. The Critical Incident Sheet for that matter, filed by Shaw on November 17, 2017, is Exhibit R-143. A Critical Incident Sheet is the form used by VPD officers when an officer makes a report of a potential violation of policy by another officer. Once one is filed, an IA investigation will proceed. Officer Sheppard is the father of Chief Beu's grandchild and was Shaw's subordinate. Shaw's complaint concerned allegedly insubordinate actions during a burglary call that Sheppard had responded to.

Triantos prepared an investigation report for this IA investigation on September 10, 2018. (R-144.) Triantos's investigation included a review of all relevant information, including CCTV and body camera footage, reports, and interviews, including an interview with Sheppard. Based on his investigation, Triantos recommended sustaining multiple policy violations against Sheppard, including: (1) insubordination; (2) failure to submit report by end of shift; (3) failure to separate male and female prisoners in custody; and (4) failure to maintain consistent supervision over arrestees. Triantos's report did not recommend discipline for either officer. It was the chief's purview to recommend discipline.

At the conclusion of his investigation, Triantos presented his findings to Chief Beu for Beu's consideration of whether to sustain the charges and any associated discipline for both Sheppard and Rivera. Triantos told Beu he was recommending suspension for

Sheppard and Rivera. Triantos did not think to tell Beu that Beu had a conflict in ruling on the matter, as it would not be his place to tell a chief of police whether the chief has a conflict.

When Triantos presented his findings, Beu was standoffish and argumentative. Beu was unhappy with Triantos's conclusions and questioned his findings. Beu sustained all charges and said to give counseling to both Sheppard and Rivera, even though Sheppard had four separate charges and Rivera had only one charge. Triantos was surprised that Beu would only order counseling when these many charges were sustained. Shaw had previously received a two-day suspension for a single act of insubordination whereas Sheppard was only receiving verbal counseling. Triantos did not tell Beu he disagreed with Beu's decisions. At pages eleven through twelve of his investigation report. (R-144), Triantos indicated Beu's final disposition and action and concluded his report.

Several months later, Triantos was requested by Police Director Edwin Alicea to provide a summary of this matter, which Triantos did, so that Alicea could produce it to the CCPO. (R-148.) Triantos did not recall Alicea ever telling him to provide a written report outlining the IA investigation. Alicea did not request the actual IA file. Triantos's summary, dated June 28, 2019, did not mention Rivera, even though his investigation report dealt with Rivera and Sheppard. Triantos did not know how Alicea had known about the Sheppard IA file to ask him about it. Triantos understood that Alicea was the complainant to the CCPO and that Tonetta also complained.

On September 3, 2019, the prosecutor informed Tonetta that Alicea should not have requested Triantos to provide a written report outlining the details of an IA investigation. As a result, Triantos was informed that he should not have provided his written summary to Alicea. Triantos received a written reprimand for doing so.

Triantos was interviewed by Cuff in connection with the CCPO's investigation into the Sheppard matter. (R-151.) Cuff's summary of the interview states that Triantos said that Beu questioned the inconsistencies, and that when Beu directed the counseling, Triantos issued the counseling, never disagreeing with Beu's decision. Triantos testified

that he never challenged Beu because he was just the investigator, not the disciplinarian. According to Triantos, Cuff never asked him about his findings in the Sheppard matter.

Adam Austino testified for the respondent on May 31, 2024, and the parties have stipulated to his testimony. (J-9.) In late 2017 and early 2018, Austino was a VPD captain and a member of the VPD command staff. In this capacity, Austino conferred with Beu daily regarding VPD matters, including personnel matters involving transfers and assignments.

Austino, along with Beu and Finley, received Kim Beu's email application for the juvenile unit on November 11, 2017. (R-126.) Austino lobbied for Felipe Laboy to be assigned to the juvenile unit and had many discussions with Beu about this. Beu had concerns about potential backlash if Kim Beu were assigned to the juvenile unit. There was also discussion about how Chief Beu being Kim Beu's father should not be held against her. Austino did not recall Beu stepping away from any discussions about the juvenile unit or about Kim Beu's assignment to the juvenile unit. Both Laboy and Kim Beu were placed in the juvenile unit at the same time in the same order.

Adam Austino testified for the petitioner on October 29, 2021. Adam Austino worked for the VPD since May 2001. He began as a patrol officer, then was promoted to sergeant, then lieutenant, then captain. As a training lieutenant, he was assigned to IA for a few months. As a captain, he served in various roles until he was removed in November 2021. He was reinstated in March 2024, but as soon as he was reinstated, he was suspended and fired again. That matter is on appeal.

Austino knew Todd Gelfand because Gelfand had worked on some of the department's cases and Austino had worked with him for some of the city's cases. Austino was first made aware that the city had retained Gelfand to conduct an investigation in May 2019 by email from Rick Tonetta. Austino was under the impression that Gelfand was going to be a neutral investigator to investigate the series of complaints he and others had made, and counter-complaints.

Around January 2019, after Gelfand and Austino had taken a deposition in which Austino was the witness, Gelfand pulled Austino aside and told Austino he had been assigned by Tonetta to investigate some sort of thing where Austino was “in some sort of trouble.” Gelfand told Austino he was not going to take the case, because he did not feel it was appropriate, explaining that it was a conflict for him because the two had a close working relationship.

After Austino got the email from Tonetta in May 2019, Austino set up a phone call with Gelfand on May 30. This was a friendly conversation about what Gelfand had been tasked to do. Gelfand apologized that he had told Austino he was not going to take the case a few months before, saying that after speaking with his partner they determined they needed the money and needed to take the case. Gelfand told Austino he was going to be working for and answering to “city administration.” Austino told him his complaint is against the city administration, and they discussed that it might be appropriate to only answer to the city counsel or something like that. Gelfand told Austino he could schedule an appointment to interview him after Gelfand interviewed the complainants. Austino told Gelfand that he was one of the complainants, and Gelfand was not aware of that. Additionally, Tonetta had represented to Austino that the Joint Insurance Fund (“JIF”) was paying for the investigation, but Gelfand told Austino that the JIF does not pay for these types of investigations and would not pay for this investigation.

R-4F was the grievance that Austino had filed. On cross-examination, Austino agreed the grievance did not include that Gelfand had told him specifically that he had a conflict. Austino did not remember the exact words that Gelfand had used in their January 2019 conversation which had given Austino the impression that Gelfand had a conflict of interest. This grievance did not mention either Austino’s January 2019 or May 30, 2019, conversation with Gelfand. Austino also indicated in R-4F that Beu had received a request from Gelfand to review Austino’s IA files. Austino did not remember how he found out about that request, but it was most likely that Beu told him, although he did not remember the conversation. It was most likely that after Austino filed his grievance, he showed it to Beu per grievance procedure.

As it became more and more apparent to Austino that this investigation was biased and one-sided, and Austino was made aware that Gelfand was trying to get his IA files, Austino objected and advised Beu that Gelfand had a conflict and that he did not want Gelfand to have his IA files. Austino believed they were not investigating his complaints, that the investigation was not mutual and objective. It seemed to him like a fishing expedition by the mayor and his friends to get his files and overturn cases for which Austino had already been exonerated. Also, Austino objected because of the general principle that the files are confidential, and he had a right to object to a third party looking at them. The PBA, of which Austino was a member, eventually filed a grievance objecting to Gelfand receiving those IA files.

Additionally, Austino became concerned that Gelfand had a particular CCPO file, the MVR/wiretap file, which was one of the cases for which the CCPO had already investigated him and in his mind, exonerated him of wrongdoing. The wiretap matter was a complaint that was made by PBA officers in December 2016, alleging that the VPD was listening in on conversations of patrol officers who had mobile vehicle recorders, MVR, in their police cars. This allegation was brought to the prosecutor's office. Austino did not give an interview with the CCPO regarding this allegation. He could not recall on cross examination what the prosecutor's office's determination was for this allegation—whether it was not sustained, exonerated, or unfounded.

On cross-examination, Austino denied that Beu told him on July 17, 2019, that Gelfand had the wiretap report, the day after which Austino filed a grievance about Gelfand's possession of that report. When shown R-4D, the email from Gelfand to Beu on July 17, 2019, informing Beu Gelfand had wiretap file, Austino said he did not remember discussing the email with Beu.

Between when Austino filed his grievance in July 2019 and November 2019, Austino was pretty sure he had spoken to Beu about Gelfand's request for IA files. Austino objected to Beu producing the files. He did not want Gelfand to have access to his IA files, and he made it well known. Austino and Beu had discussions in which Austino would state his continued objections. At a certain point, Austino was under the impression that

Gelfand was seeking all of Austino's files. Beu most likely told Austino at some point that this was not the case, and that Gelfand had provided a list of files he was seeking.

Gelfand interviewed Austino in-person in November 2019. Austino was represented by counsel. Austino spoke with Ron Henry of the CCPO right after the November 2019 interview in which Gelfand had shown him the wiretap file. Henry told him he would look into the issue. When Henry called him back, he told Austino they did not know how Gelfand had gotten the file, and did not mention that they had released that file to Rick Tonetta back in 2017. Austino ultimately went to the prosecutor's office to make his complaint.

Austino had an interview with Detective Henry on December 18, 2019. (R-205.) Austino eventually came to learn that the prosecutor's office declined to take any action against Gelfand in reference to his complaint.

Austino knew DeMarchi and had worked with him since he was hired. When DeMarchi had been on the list for sergeants but had not yet been promoted, DeMarchi talked about the list nonstop, to the point where people would avoid DeMarchi in the halls because that was all he wanted to talk about. The sergeant's list is good for three years. Austino believed that DeMarchi was not the next person on the list to get promoted. If the list expired, those on it but not promoted would have to take the exam again.

Austino's understanding was that Terry Hall, another police officer in VPD, was in front of DeMarchi on the list to be promoted. DeMarchi was advocating for and talking about his hope that Terry Hall would be bypassed so DeMarchi could be promoted. People in the department would call Terry Hall "T-Bag," although Austino never heard Beu call Hall that. Austino's nickname was "T." or "T. Hall," which was how most people referred to him.

Austino was not present during the day in April 2017 when it was alleged that Beu made certain statements.

Austino's father was the sheriff of Cumberland County from about 2008 to 2023. Austino never asked his father to exert any political influence over the prosecutor's office to fix any of the investigations into Beu and was not aware of any effort by his father to do so. Austino's father and Beu knew each other since probably when Beu was first hired, in 1980, 1981, or 1982. Austino has known Rudy Beu ever since he was born.

While Austino was familiar with the JIF, he could not comment on when JIF could pay for an outside investigation, nor was he involved in the day-to-day decision-making of the assignment of counsel.

Austino did not remember any specific conversations with Beu about the directives from Alicea in January and February 2020. Austino remembered Beu being very rushed. Over the course of Gelfand's discussions, Gelfand asked Austino to provide any documents that Austino felt supported his contentions.

Adam Shaw testified on behalf of the respondent and the parties have stipulated to his testimony. (J-9.) Shaw is currently a VPD lieutenant, and he had issued the critical incident report, (R-143) that was the subject of the Sheppard investigation. Shaw was Sheppard's supervisor at the time of the incident. Shaw's concerns about Sheppard's handling of the burglary call were set forth in the incident sheet. Because of the high volume of calls on that shift, Shaw had clearly and unequivocally issued an order over the phone to Sheppard that only one officer should handle the burglary call and associated warrant arrests.

Ron DeMarchi testified for the respondent and the parties have stipulated to his testimony. (J-9.) DeMarchi was a retired VPD sergeant who had served with the department for twenty-five years. During his tenure, DeMarchi had worked with Rudy Beu extensively, including in the criminal division. DeMarchi testified that Beu liked to joke a lot. One of Beu's daughters (not Kim Beu) was one of DeMarchi's children's teacher.

In 2017, DeMarchi was on the civil service list for promotion to sergeant. Beu was the chief of police at the time. On April 7, 2017, DeMarchi and his wife, Suzette DeMarchi,

were at the Philadelphia Phillies opening day game. Before the game, they were at McFadden's Bar, a bar in the ballpark, and Beu and VPD Sergeant Riordan were also there. While there, DeMarchi saw Suzette at the bar talking to Beu and Riordan. Suzette waved DeMarchi over, and DeMarchi approached them. The bar was crowded. When DeMarchi reached the bar, Suzette pointed to Beu and said to Beu to tell DeMarchi what he (Beu) had just said to her. Beu said, I'm going to promote you over T-Bag. DeMarchi did not believe it, because he was number four or five on the list. Beu then said, If I can take Suzette home, I could make it possible. "T-Bag" was a derogatory reference to Terry Hall, another officer in the VPD who was also on the civil service list for promotion to sergeant, one spot ahead of DeMarchi. DeMarchi denied that he had been harassing Beu about the promotion.

DeMarchi was upset by the comment and began to walk away. DeMarchi admitted he left Suzette alone at the bar with the man that just propositioned her because "she's a big girl." He did not want to do something to Beu that would jeopardize his job. DeMarchi could hear Beu repeating "I'm gonna promote Ronnie!" Suzette then told DeMarchi a few minutes later that Beu started saying that he wanted her to go to his office and clear the desk. Suzette also told DeMarchi that Riordan asked her what "Ronnie's best assets were" if they were going to promote DeMarchi, to which Suzette had said that DeMarchi is a hard worker and had been there a long time. Riordan then said something to the effect of "not that," and then looked up and down her body, suggesting that he meant Suzette. DeMarchi was extremely upset by these comments but hoped that they would stop. DeMarchi did not hear Riordan's comments directly.

Several months later, DeMarchi heard from another supervisor, Lt. David Cardana, that Beu was going to block DeMarchi and Pedro Casiano for promotion. In late August 2017, DeMarchi went into Beu's office to see whether there was any truth to that rumor. When DeMarchi went to Beu's office, Kim Beu was there talking to Rudy Beu about a mortgage, and how only Kim Beu should be on the mortgage. DeMarchi asked to speak with Beu, who said yes. DeMarchi asked to speak with Rudy Beu alone, and Beu said "Oh, it's one of those meetings." DeMarchi said yes and closed the door. DeMarchi told Beu what Cardana had said, and Beu said that it wasn't true. Beu then said that he could promote DeMarchi if he could have Suzette. DeMarchi then started walking away, and

Beu said, "What about Brooke?" Brooke DeMarchi is DeMarchi's pre-teen daughter. DeMarchi left the room and went outside to his truck, where his son and daughter were waiting while he went into the department.

DeMarchi was aware that Stephanie Adams was Beu's administrative assistant, and that she sat about ten to fifteen feet from the door to Beu's office. Adams could hear what was discussed in Beu's office if the door was open.

Weeks later, DeMarchi asked to speak with Richard Tonetta about his concerns. (R-94.) The two had further discussions about these comments. (R-95, R-96, R-97.) DeMarchi felt that the city did nothing to respond to his concerns.

Sometime later, DeMarchi saw Tonetta golfing at a golf fundraiser and asked Tonetta what was going on. Tonetta told DeMarchi, "The chief said he didn't do it." Tonetta had told DeMarchi at some point that Beu and his wife were swingers. DeMarchi told Gelfand that Tonetta lied to him and that Tonetta was a liar.

In January or February 2018, Beu promoted DeMarchi. Beu also promoted Hall.

Two OPRA requests were made to the City seeking DeMarchi's communications with Tonetta, one from a reporter from NJ.com seeking communications related to a possible lawsuit from DeMarchi. (R-98A, R-98B, R-98C.) DeMarchi became aware of these requests because he was requested to provide any responsive documents. (R-98E.) DeMarchi did not want his allegations to be given to the press, but he was advised by the PBA that speaking to the reporter may help to control the matter, since the reporter was going to get the documents anyway. So, although he did not feel comfortable doing so, DeMarchi spoke with the reporter on the advice of the PBA. To DeMarchi's disappointment, NJ.com published an article about his comments. DeMarchi did not leak the story to NJ.com and felt used by Pacitto and Scarpa, who wanted the article published.

DeMarchi later filed a lawsuit regarding Beu's comments, but the case was dismissed without prejudice due to a pleading issue, although DeMarchi's attorney never fixed the pleading issue. (P-7.) DeMarchi is now suing his lawyer.

DeMarchi referred to Beu as “Mr. Beu” rather than “Chief.” DeMarchi saw the t-shirts referencing locking up one’s wife and daughter and referring to Chief as “Mr. Beu” at a PBA event.

DeMarchi is aware of the investigation into this matter by the CCPO and that the CCPO found the complaint was unfounded.

During DeMarchi’s interview with Gelfand, DeMarchi told Gelfand he knew “T-Bag” and stated that Beu referred to Hall as “T-Bag” all the time. At the departmental hearing, though, DeMarchi testified that the April 2017 Phillies game was the first time he had heard someone use the nickname “T-Bag.”

DeMarchi was interested in his son attending St. Augustine and had worn a St. Augustine shirt at his CCPO interview.

Ernest “Ron” Cuff testified for the respondent on June 4, 2024. The parties have stipulated to his testimony in Exhibit J-9. Cuff retired from the CCPO as Chief of Staff three years ago. He had worked for forty years in law enforcement and knew Rudy Beu from that time. He has conducted professional standards investigations, including thousands of IA investigations, and is aware of civil service regulations.

In 2019, Cuff was chief of staff and tasked to investigate an allegation against Beu that Beu should not have ruled on a disciplinary matter involving Sheppard, or if Sheppard had received favorable treatment. (PSU-19-0150.) Cuff was also asked to review the DeMarchi/Kim Beu matter. (PSU-19-0203.) When investigating a chief of police, the scope of his investigation goes to the criminal and administrative investigations (rules and regulations of the police department). IA investigations of the chief of police must be done by the prosecutor’s office; municipal departments cannot conduct IA investigations of its own chief.

For the Sheppard investigation, Cuff obtained a copy of the email complaint, Sheppard’s IA file, and files for other sustained insubordinations, but Cuff did not receive

the Shaw insubordination IA file. Cuff's completed report for the Sheppard matter is Exhibit R-151. Cuff said that Beu was exonerated in the Sheppard matter. Cuff did not believe that there was merit to Shaw's critical incident complaint because other supervisors in the room did not see what Shaw claimed; Cuff claimed Sheppard did nothing wrong. Cuff also reviewed other insubordinations decided by Beu and believed that the disposition of Sheppard's insubordination was consistent with those other matters.

It was Tonetta who made a complaint about the Sheppard matter, not Triantos, and Tonetta did so nearly two years after the event. Alicea had alleged that Triantos made the complaint about Sheppard, but Triantos told Cuff he did not and that Tonetta did.

Cuff testified that the investigation report for the DeMarchi/Kim Beu investigation, R-114, was not his complete report for that matter. There would also be an allegations and conclusions report, as well as recommendations. The prosecutor would make the final conclusion. R-114 did not contain an allegations and conclusion section. Cuff did not sustain the allegations regarding Beu's comments alleged by Suzette DeMarchi, because half of the witnesses said it did occur, and half did not. He did not sustain a violation because fifty-one percent of the witnesses said that Beu did not do anything wrong. Cuff's definition of "not sustained" is that fifty-one percent of the people say that an allegation did not occur. 50/50 is not sustained according to Cuff. If fifty-one percent said that Beu did not do it, then it would be unfounded. Generally, when conducting an investigation, Cuff will look at the number of witnesses on each side and side with the position that has a larger number of witnesses.

For the DeMarchi matter, Cuff interviewed Bill Riordan, Matt Finley, Stephanie Adams, Tom Riordan, Rudy Beu, and the DeMarchis. The disposition for the DeMarchi matter was "unfounded." Cuff evaluated all evidence and statements to make this conclusion.

For the Sheppard matter, Cuff would have reviewed and considered whether Beu's consideration of Sheppard's discipline could implicate VPD's General Order 2015-010, Fraternization and Relationships. (R-164.) His analysis and conclusions would be in a

different report. The disposition of the investigation into the Kim Beu matter was “unfounded.” Cuff did not believe Rudy Beu was untruthful in his interview regarding the Kim Beu matter. Cuff interviewed Kim Beu, Harris, Bowers, and Rudy Beu regarding this matter, and obtained all transfer and personnel orders to review. The “Chief’s Rule” was not a binding rule but a rule of thumb. Additionally, Kim Beu had three years on when she was transferred to the juvenile unit anyway.

Cuff testified that Alicea is not entitled to IA files. The CCPO’s position regarding the release of IA files is included in the prosecutor’s September 3, 2019, letter. (R-152.) Beu and Austino self-referred to CCPO and produced the unfiled PBA lawsuit leading to the Kim Beu and DeMarchi investigation. Cuff did not know why the CCPO’s investigation of the draft complaint (R-114) was initiated so long after the allegations were brought to the CCPO’s attention.

Cuff was recalled for redirect examination on September 25, 2024

September 6, 2019, was the first time Cuff was directed by the prosecutor to investigate allegations from the PBA’s November 2018 civil action complaint.

Exhibit R-208 contains Cuff’s conclusions and allegations report regarding the Kimberley Beu/Josh Sheppard matter and the DeMarchi matter. This report conveys Cuff’s opinion of what the evidence in the investigation revealed upon the investigation’s conclusion, prepared for the prosecutor’s review before she rendered her decision.

R-208 also contains Cuff’s request for legal review to have the authority to interview Beu administratively. Cuff had to request this because he does not have the authority to decide to interview Beu administratively while there were criminal allegations against Beu; the prosecutor or attorney general has the authority to decline criminal prosecution to give Cuff authority to conduct an administrative review. When there is a criminal allegation against a police officer, the officer is afforded the same opportunity under Miranda as any other accused. When there is both a criminal allegation and an administrative investigation into an officer, Cuff did not have the authority to separate those investigations—only the prosecutor, the attorney general, or the prosecutor’s

designee (here, the first assistant) had the authority to determine which way the officer would be interviewed. As of November 27, 2019, there was a criminal investigation into Beu. Thus, before Cuff could speak to Beu, he had to get approval or authority from the prosecutor, the attorney general, or the first assistant. Cuff did not interview Beu before rendering his conclusion as to whether a criminal investigation could proceed.

R-208 also contains documents from the records management system used by the prosecutor's office. (marked Cumberland-PROS-10). At page 11, there was an entry for September 9, 2019, at 10:16 a.m. reopening the matter and referencing a discussion with Webb-McRae, where she had directed the investigation be reopened. The next entry was January 28, 2020, at 8:15 p.m., at which time Cuff tendered his allegation and conclusion report to the prosecutor. According to Cuff, the prosecutor would upload everything into this system, Infoshare, for tracking when everything was said and done, as it was just a formality to have things in the record management system electronically. Cuff does not specifically remember ever sitting down and discussing his conclusions and allegations with Chief Necelis or anyone else. On page Cumberland-PROS-12, there is an entry from Chief Necelis which says, "This case is one of many that is indicative to the current discourse between the chief and the union/city administration."

Pages 79 through 82 of Ex. R-208 is the Feb. 4, 2020, letter from the prosecutor to Edwin Alicea. Cuff did not draft it. He would assume the prosecutor drafted it because she signed it.

Cuff's report for the DeMarchi matter is Exhibit R-114. Cuff reiterated that a finding of "unfounded" means that at least fifty-one percent of the witnesses and evidence denied the allegation rather than supported it. In this matter, fifty-one percent of the evidence was in favor of Chief Beu. Cuff believed that DeMarchi had a motive: to be promoted, since he did not score high enough on the test to be promoted automatically. Cuff also testified that he had analyzed Beu's motive. When asked what his analysis of Beu's motive was, Cuff answered, "What would be a reason for him to say something like that? He denied saying it. No one supports he said it." Cuff did not detail his analysis of someone's opinions or motives in the report; it only contains the evidence he reviewed.

He was sure he considered Ronald DeMarchi and Suzette DeMarchi's motives at the time, but did not specifically recall his analysis.

Part of the prosecutor's normal practice when determining whether to sustain, not sustain, or deem charges unfounded included watching any video interviews. Cuff did not recall having any conversations with Webb-McRae about her opinions as to credibility and motive in this matter. He did not remember that she ever indicated to him her analysis in reaching her final dispositions.

As part of his investigation, Cuff interviewed Suzette DeMarchi on September 20, 2019. (R-101.) When during this interview, Cuff apologized for the "delay in the investigation," he was referring to the fact that the alleged incident happened two years prior before the complaint came to his desk. Cuff stated that the delay in the investigation was that it was "not being reported in a timely manner."

R-151 and R-207 represent the entirety of Cuff's report, allegations and conclusions documentation and related documentation for the Sheppard matter. When in R-151, Cuff recommended that "[t]his investigation should not be released to Vineland City counsel or Vineland City solicitor," that was because this allegation involved another internal investigation which Tonetta or Alicea did not have the right to have a copy of, according to the Attorney General's IA policies. It would be the prosecutor's decision whether to release an internal administrative investigation. Beu had told Cuff that he thought the Sheppard allegation was an attempt by the city solicitor and Alicea to access the Vineland PD IA records, but Beu did not specifically tell Cuff that this file (R-151) should not be released.

Cuff has no personal knowledge as to whether the prosecutor, in rendering her final conclusions in this matter, reviewed anything other than Cuff's allegations and conclusions document. Cuff testified that the prosecutor's normal practice was very thorough: she reads notes, reports, and listens to interviews sometimes.

When asked whether he would have exonerated Sheppard, Cuff responded that upon reviewing his allegations and conclusions report (in R-207), it says he would not

have sustained this complaint. Cuff did not conduct the investigation as to whether Sheppard was insubordinate in response to a radio or phone call by Adam Shaw, and indeed, never conducted any administrative investigation into Officer Sheppard regarding any allegation. This report, R-207, was the first place in which Cuff wrote his opinion or conclusion as to whether Sheppard's insubordination charges should have been sustained. Cuff explained that the document did not include his opinions or analysis, but rather, the facts and evidence that he discovered. His opinions go into the allegations and conclusions.

In this conclusions and allegations report, Cuff also explained why he had recommended that the file should not be released: because he believed Director Alicea had provided false information in connection with the investigation, specifically, that Alicea provided false information identifying Triantos as the complainant. Alicea had come to Cuff's office and told him face-to-face that he had received a complaint from Triantos. Cuff documented his conversation with Alicea that day in his report beginning on page CUMB-PROS-13, but did not document the fact that that day, Alicea told him Triantos was the complainant.

When asked whether he had conducted an assessment of Beu's truthfulness as to the Kim Beu matter, Cuff answered that he had conducted an analysis of Chief Beu in every allegation made against him. Upon being shown the transcript from the departmental hearing, however, Cuff agreed he had previously testified that he had never been asked to consider whether there had been untruthfulness on the part of the chief in connection with the matters relating to Kim Beu.

Suzette DeMarchi testified for the respondent and the parties have stipulated to her testimony. (J-9.) Suzette is Ronald DeMarchi's wife. She works as an educator with Vineland Public Schools, formerly as a principal and now as the district-wide Director of Curriculum and Instruction. She comes from a very strict Italian Catholic family. Her family was in law enforcement, including her father, who was a police officer in Cherry Hill.

Suzette recalled the April 7, 2017, incident with Rudy Beu at McFadden's Bar in Citizen's Bank Park for the Phillies Opening Day. She had gone over to the bar and sat down at a stool to order an amaretto sour. Beu and Riordan were next to her when she was ordering her drink. Beu clearly stated to her that he was "going to skip T-Bag" and promote her husband, Ron DeMarchi. Suzette waved her husband over and told Beu to repeat to her husband what he had just said. Beu made the statement again that he was going to "skip T-Bag" and promote DeMarchi. Beu then made a comment that he would seek to get DeMarchi promoted "if I can have your wife, if I can take her home," which Suzette DeMarchi took to mean that Beu would promote DeMarchi if he (Beu) could have sex with Suzette. Beu never said the word "sex."

Ron DeMarchi was visibly annoyed and walked away. Suzette knew her husband very well and knew that he had walked away for his own protection, as DeMarchi did not want to do something to Beu that would jeopardize his career. Beu then started loudly repeating "I'm going to promote Ron!"

Suzette did not leave immediately because she knew how to handle herself, and she was not going to let Beu or Riordan try to intimidate her. Riordan asked Suzette, "what is Ron's best asset." Suzette said she referenced DeMarchi's work ethic and that he has been at the VPD for a long time. As she said this, however, Riordan was looking at Suzette strangely and she got the clear impression that Riordan meant that she (Suzette) was Ron's best "asset," to which she took offense. Suzette walked away, leaving the bar to go to the suite. The entire scenario at McFadden's lasted less than two minutes.

Suzette was very upset when the NJ.com article was published in 2019. She did not want these matters to be publicized and had nothing to do with these matters being put in NJ.com. Her husband never told her he had spoken with a reporter.

Suzette was only interviewed by Cuff, never by Todd Gelfand. During her interview with Cuff, Suzette told Cuff that when she had asked Ron to come over and Beu to repeat what Beu had said, he had said "I don't know this guy's real name." (R-101.) Suzette

never asked her husband what “T-Bag” meant and only learned about it when she testified at the departmental hearing.

Jennifer Webb-McRae testified on behalf of the respondent. She is the prosecutor for the County of Cumberland and has been since January 2010. During that time, she has become familiar with the IA Policies and Procedures of the Attorney General’s Office. As the Cumberland County Prosecutor, she is the chief law enforcement officer of Cumberland County, although she is not the appointing authority for police officers within the VPD. Although her office has the ability to review IA investigations made against a law enforcement executive, the Cumberland County Prosecutor’s Office does not have the power to discipline Chief Beau as that power of discipline rests with the appointing authority. Discipline is an administrative function which is within the City’s purview as a civil service employer. Her office has reviewed IA matters involving law enforcement executives not just for the City of Vineland, but other agencies within the County of Cumberland. There are two different types of review for a law enforcement executive, one is a criminal review, and the other is an administrative review. After a criminal review has been conducted, if the matter involves a law enforcement executive, including a chief of police, her office has the duty to conduct an administrative investigation of the matter. In the case of a law enforcement executive, after the prosecutor’s office has conducted the administrative investigation, as a general practice and a general rule, her office will complete its administrative investigation and then send the file back to the civil service employer to take whatever administrative action it may deem appropriate. The civil service employer is free to agree or disagree with the findings of the prosecutor’s office. The civil service employer may conduct an employee investigation.

Ms. Webb-McRae was aware that Josh Sheppard was a Vineland police officer who was the father of Chief Beau’s grandchild. The issues were whether Chief Beau should have ruled on a disciplinary matter involving Sheppard as well as whether the discipline that he issued in the matter was outside the realm of discipline issued in other matters. She did not recall what the underlying allegation was against Sheppard. Lawyers consider conflicts of interest or appearances of conflicts of interest, but she was not sure that police officers take that into consideration. When the prosecutor’s office looked at

the Sheppard matter, they looked at what the department policy was on conflict of interest. She wrote a letter dated September 3, 2019, to the Vineland City Solicitor, Richard Tonetta, regarding the Shepard matter. (R-152.) The prosecutor's office reviewed several files where the discipline issued was for counseling performance notices and written reprimands. They also reviewed other files in which Chief Beu reviewed issues of insubordination and concluded that the discipline that was issue to Sheppard was consistent with the other files. She determined that based on a review of the policy, there was not an actual conflict and then her investigator took the next step to see if the discipline issued to Sheppard was in line with other discipline issues for insubordination. She was not judging Beu by a lawyer standard, so when she determined that it was not a conflict, but an appearance of a conflict, the next step was to see even if it was an appearance of a conflict, was the discipline in line with what it should be. She explained in an email to Mr. Tonetta her analysis as to why she determined that there was an appearance of a conflict. (R-154.) She also addressed her concerns that Director Alicea should not have been requesting a report of the underlying Sheppard IA matter. (R-152.)

A series of emails beginning with one from Ms. Webb-McRae of June 19, 2019, 2:39 p.m. to Richard Tonetta indicating that Carl Cavagnaro, the trial chief in her office advised her that Tonetta had advised that an allegation had been made that Chief Beu was involved in a matter where he had a conflict of interest and she requested Tonetta to provide her with whatever materials he had as well as the name of the complainant to Chief of Staff Ron Cuff. (R-147.) She had to request the information more than once and eventually received it. The officer involved in the IA investigation, Triantos, had been away on vacation and when he got back, the information was provided to her office for Chief Cuff's review. Alicea indicated in an email on June 27, 2019, to Tonetta and copying in Ms. Webb-McRae and Chief Cuff that Triantos had received Alicea's request for a report of the allegations. She did not advise Alicea at that time that he could not be requesting an IA report from Triantos, nor did Chief Cuff. Mr. Alicea is the police director and the title 40A appropriate authority.

Once the prosecutor's office completes an investigation of the chief or someone on the chief's command staff, they make recommendations and notify the appropriate authority and advise them that they can take any action they deem appropriate and make

the file available to them. If the investigation involved an officer, the file would go back to the Chief.

Ms. Webb-McRae was aware that Officer DeMarchi alleged Chief Beu made inappropriate comments to DeMarchi's wife, Suzette DeMarchi, in or about April 2017. Ms. Webb-McRae sent a letter dated December 2, 2019, to Chief Beu regarding an investigation PSU 19-0203 indicating that the prosecutor's office would not be pursuing criminal charges in connection with harassment or official misconduct. (R-110.) PSU 19-0203 involved two matters, the Kim Beu transfer and the DeMarchi matter. In Webb-McRae's declination letter to Chief Beu, it was her legal opinion, there was insufficient evidence to constitute a violation of N.J.S.A. 2C:30-2a Official Misconduct, and the statute of limitations had expired for any consideration of the violation of N.J.S.A. 2C:33-4c Harassment. Since the matters involved the law enforcement executive of the VPD, pursuant to the IAPP, the administrative investigation would be conducted by Chief of Staff Ron Cuff. (R-110.)

The undated, unfiled draft civil complaint by Doug Long was given to the prosecutor's office but she does not know when. (R-1.) There was an email from Tonetta to Webb-McRae dated September 24, 2019, 8:14 a.m. referencing the complaint had been forwarded to her office. (R-18.) She recalls several meetings with Chief Beu, one in which Tom Riordan was there, but she more commonly would have spoken to Austino and Beu but does not know the date of the meeting. Paragraphs 42 and 43 of the draft complaint relate to allegations against Chief Beu with respect to the DeMarchi matter. (J-1 at 1394.) She did not direct an investigation into the allegations against Chief Beu when she met with Beu and Austino. She recalls directing the investigation after she got the email from Tonetta. (R-18.) Webb-McRae recalls saying to herself that they were going to be tied up in looking at every petty dispute between the A and B team in Vineland, because it was consuming her IA Department. She could not believe that now they were looking into unsigned, undated complaints and fights between the union and administration.

The statute of limitations for harassment (thirty days) had expired so the prosecutor's office was not going to pursue a criminal investigation. The Analysis and

Conclusions Report and related documents from PSU 19-0203 are generated in the normal course of business of the CCPO at the conclusion of an IA investigation by the IA investigator and then presented to her for her review. (R-208.) Chief Cuff requested legal review in reference to the DeMarchi and Kim Beu matters to Ms. Webb-McRae. (R-208 at CUMBPROS 008-009.) Chief Cuff references that the allegations were identified in an undated, unfiled, unsigned civil complaint by Attorney Douglas Long on behalf of the Vineland PBA Local 266, received by the prosecutor's office on November 30, 2018, at 1:37 p.m. from Vineland Police Captain Adam Austino. (R-208 at CUMBPROS 008.) This refreshed the prosecutor's recollection of when they received the draft complaint. She explained that she did not direct an investigation initially because her office was mired in all of these investigations in Vineland and she was presented with a document that was not signed and not filed and apparently a dispute between the union and the police administration so she did not do anything when she got an unsigned, undated, unfiled complaint handed to her. It was not until she received Tonetta's letter that they started an investigation. The Infoshare screen shot is a short page separate from the investigations report where the investigator tells what they think the violations are and what they think the findings should be and then when she opens up Infoshare on each she can review the notes and see what they say and can indicate if she concurs with findings and recommendations or not or if she thought additional investigation was needed she could indicate that. The Infoshare notes go back to her chief or back to the sergeant and when they open it up, they would take whatever action she has directed. (R-208 at CUMBPROS 010.) There is an entry posted by Ron Cuff which indicates that on September 6, 2019, at 6:01 p.m. Prosecutor Jenifer Webb-McRae directed this investigation be reopened and two specific complaints be investigated: 1. Chief Beu's special treatment of his daughter, Officer Kimberly Beu and 2. Chief Beu's alleged comments whereby he asked to sleep with R.M.'s wife and daughter in return for a promotion. (R-208 at 010.) There is an entry on February 3, 2020, at 2:04 p.m. from Prosecutor Webb-McRae that she concurs with the findings and outcome and directs Cuff to do a transmittal to the City of Vineland and outcome letters to Beu and DeMarchi.

An email from Solicitor Tonetta to Ms. Webb-McRae dated September 5, 2019, references that a draft complaint was turned over to her office by Captain Austino some

time ago and that the authority to perform an investigation lied with the prosecutor's office. Tonetta was asking for the status of the investigation. (R-153.)

Prosecutor Webb-McRae sent an email dated September 6, 2019, to Chief Cuff, copying Necelis and Shapiro, directing him to investigate the Kim Beu allegation as well as the allegations in the draft complaint wherein Chief Beu asked to sleep with DeMarchi's Cuff September 24, 2019, at 1:31 p.m. (R-22.)

On February 4, 2020, Webb-McRae sent a letter to public safety director Alicea setting forth her findings and conclusions as to the Kim Beau and DeMarchi matters. (R-115.)

Prosecutor Webb-McRae is aware that IA dispositions under the IAPP are exonerated, sustained, not sustained and unfounded. A finding of unfounded means it did not happen. Prosecutor Webb-McRae went with unfounded in the DeMarchi matter because there were no witnesses that corroborated the statements and there were things that made the prosecutor believe that this just did not occur. She did review the statement that Suzette DeMarchi gave to Cuff. She reviewed his entire report. Just because a statement is not corroborated does not require a finding of unfounded. The prosecutor's office sent the file back to Vineland to take whatever action they deemed appropriate. Madam Prosecutor does not contend that her findings are binding on the City of Vineland or the judge.

The prosecutor's office also reviewed an allegation that Chief Beu provided special treatment to his daughter, Kimberly Beu with respect to her assignment to the juvenile bureau. This allegation was also included in the investigation PSU 19-0203 file. (R-115.) The investigation revealed that there was this unwritten rule instituted by Chief Codispoti that three years of service were required prior to being assigned to a specialty unit. According to the prosecutor's investigation, Officer Kim Beu did meet the three-year unofficial requirement as she was appointed a police officer from the civil service list on March 1, 2015, and was not assigned to the juvenile unit until March 29, 2018. She was also sought out for this assignment by Sgt. Shane Harris and Captain Lanay Bowers, and the unit was in need of a female officer and Sgt. Harris specifically wanted Officer Kim

Beu in this unit. (R-115.) Her general impression was that the chief was not the impetus for his daughter being assigned to the juvenile unit and he was not involved in the process but just signed off on the assignment. Her recollection is that Chief Beu did not have influence over the transfer, that was done by his subordinates and there were specific requests by Sgt. Harris and Captain Bowers. The fact that Captain Bowers wanted Kim Beu in the unit resonated with the prosecutor as she was aware that Captain Bowers did not care for Chief Beu.

A series of text messages were exchanged between the prosecutor and Rudy Beu between February 19, 2020, and February 24, 2020, (57A). Chief Beu is asking the prosecutor to keep his daughter in mind for any possible future openings in the prosecutor's office and that Cuff and Rick have her resume. Webb-McRae responded "No problem. She will be included in the process." She believes she was included in the process, and they did not hire her.

Madame Prosecutor was aware that the City was directing Chief Beu to turn over documents because Chief Beu was giving her copies of Alicea's directives and she reviewed the directives at the time. Alicea issued a directive November 4, 2019, 2:53 p.m. (R-42.) She was not sure if she received this directive but has an opinion as to what Alicea is saying. It appears that he is directing all police department personnel to comply with a civil employment investigation. In the IA work, the chief can direct police officers to comply with an IA investigation once they know that there is no criminal liability for them, because they have a right to remain silent if there is a criminal investigation going on. She would question as an employee does the civil authority has an ability to compel her to participate in employment investigations. She does not know the answer to that.

Another directive dated January 24, 2020, was sent from Director Alicea to Chief Beu regarding IA files and Mr. Gelfand's investigation. (R-47.) Director Alicea indicates that none of the guidelines appear "to preclude the request for Mr. Gelfand to review IA materials for this purpose. Should you disagree however, this directive only requires that you itemize the reason for denying Mr. Gelfand access to any of the materials on the attached list. I ask that as to any materials which you are inclined to object to Mr. Gelfand reviewing you are directed to fairly and reasonably state the basis for the rejection in

writing.” An email from Beu to Ms. Webb-McRae on January 25, 2020, 1:18 p.m. advises that the city is again pressuring him to release IA files to Attorney Todd Gelfand for their purpose of privately conducting an internal investigation. Beu advises her that the city is threatening him with insubordination charges if he did not produce the IA files. (R-47D.) Ms. Webb-McRae believed Chief Beu was referring to something in the new IA policy that talked about a private investigator for IA investigations. Knowing what she knows now, she would agree that Attorney Gelfand was retained by the city to conduct an employment investigation, not an IA investigation. After receiving the email from Beu, she had a telephone conversation with Beu. Webb-McRae then forwarded the email from Beu to Necelis, Cuff and Shapiro on January 27, 10:40 a.m. and indicated “Got this from Beu. Had a telephone conversation where I advised that we would weigh in on any file related to him since and in his capacity as chief. Most of them would have gone to the city administration already. He did send a communication saying he needed more time.” (R-48A.) Webb-McRae had previously told Alicea that if he wanted to know something about the Chief, he had to come to her. When she referenced that most of them would have gone to city administration already, they were getting inundated with requests from Gelfand over the course of this saga, she was not sure if she was just referring to that singular capacity where they do an investigation instead of the IA because it is the chief. She thinks she probably was just saying there most of them have probably gone to city administration already because they kept getting request for files in this saga.

Prosecutor Webb-McRae has never told Chief Beu not to produce files. She reviewed her text messages and there is a text message from her to Beu that says something to the effect of either turning them over or as she has told him when are the circumstance that you do not have to turn them over. She had provided Beu with the roadmap from the IAPP if he was not going to turn them over. She never said to Beu don’t turn them over. She guided him to look at the IAPP and analyze the circumstances and make his decision. She was not going to make the decision for Beu as to the release of the files, but she provided him with the criteria for how to make that decision.

Beu forwarded subsequent email correspondence between he and Alicea to Webb-McRae. (R-49A.) R-52 is another directive from Alicea to Beu dated January 28, 2020, regarding this issue. R-53 is another directive dated January 29, 2020, from Alicea

to Beu regarding this issue. R-54A are text communications between the prosecutor and Beu from January 24, 2020, until January 29, 2020.

On February 6, 2020, Ms. Webb-McRae emailed the Attorney General's Office seeking clarification on section 4.2.7 of the new IAPP manual and lists various attachments, including the Austino complaint about Gelfand. (R-55B.) She also attached the directives issued by Alicea (R-55C) as well as the Austino complaint about Gelfand. (R-205.) R-205 is a fifty-three-page document containing a report of Ronald Henry and several items with that report. Webb-McRae reached out to the AG's office because Gelfand was a partner of Vanessa James who represented the prosecutor's office in litigation. Gelfand was representing the city in a matter that was interfering or touching upon her business and in her opinion was getting adversarial and she needed to know whether or not she could make a decision about Austino's complaint that Gelfand had done something criminal. Gelfand had called her office to get a copy of the complaint, which Webb-McRae believed displayed chutzpah, to be calling the prosecutor's office up and asking them did Austino make a complaint against him. She did not know if Austino knew that Gelfand's partner had represented the prosecutor's office so she needed to know from the AG's office whether she could make this decision about Gelfand. The complaint about Gelfand stemmed from his receiving a copy of the MVR investigation report which Austino alleged was improper, as well as Gelfand's having shared or questioned people and shared information from that IA file in his questioning of others. A request for supersession is something the prosecutor does with the AG's office where the prosecutor's office asks them if they can move forward and handle something, or should it be sent to another office for handling, or the AG's office would handle it themselves.

A February 6, 2020, email from Austino to Detective Henry and Cuff and copying Beu advised that Gelfand's investigation is a witch hunt. (R-55D.) Webb-McRae reached out to the AG's office to ask their opinion as to whether her office can investigate this complaint by Austino. Jeff Burell from the AG's office sent a response dated February 20, 2020, 4:58 p.m. advising them that the CCPO can continue to review the Gelfand matter but those named parties in the prosecutor's office that Vanessa James had represented needed to be screened off. (R-57C.)

Prosecutor Webb-McRae also raised other issues in her request for review by the AG's office including her taking over the IA department at the request of Beu and the State Chief's Association so she could provide cover for Beu by having the prosecutor decide whether or not to release the files to the city. (R-55B.) Webb-McRae wrote "In my opinion I don't believe taking over to provide coverage is an appropriate use of my authority." Webb-McRae continues "However, if the call were mine to make (as me assuming the chief's role) I would release IA files to the city because I believe that in the midst of whistle blower accusations, the city has a good cause interest to see the reports and prepare a defense (or before lawsuits are filed lock in witnesses and/or make policy change decisions to protect themselves)." (R-55B.)

Alicea's directive to Beu dated February 19, 2020, contains an attachment that lists the IA file materials that are being requested for the HR investigation. (R-56.) Beu is continuing to be in communication with the prosecutor on this issue. (R-57A.) Beu also forwarded this directive to the prosecutor. (R-57AA.)

The AG's office in its response to Webb-McRae's request for supersession also indicated that "A municipality may hire someone to conduct an investigation in order to defend the municipality in cases where allegations of hostile work environment, harassment, discrimination, whistle blower or other purely civil matter may arise." (R-57C.) Mr. Burrel also indicated to the prosecutor in R-57C at 2 item number 4: Finally, with regard to the topic of releasing any IA information and/or files, we discussed that such release must be determined in accordance with Section 9.6 of the IA policy and procedure manual. As you know this section states that the information and records of an internal investigation shall only be released or shared under certain enumerated and limited circumstances."

Webb-McRae sent an email of February 21, 2020, 2:02 a.m., to Director Alicea, copying in Beu, and advising Alicea that Beu had consulted with her, and that she had consulted with the AG's office and requested that no action be taken until she could respond. (R-58.) Webb-McRae sent an email to Beu copying in various individuals including director Alicea and attaching her letter of February 23, 2020, to Beu. (R-58B.)

Her letter of February 23, 2020, provided Chief Beu with the guidelines for the analysis and that is what the AG's office told her to do.

A series of text messages between Webb-McRae and Beu dated February 24, 2020, includes a screen shot of a letter that Alicea sent to Beu. (R-60A.) Beu sent an email to Alicea dated February 25, 2020, 8:59 a.m., copying in the Webb-McRae. (R-61.) This copies a letter from Beu to Gelfand dated February 25, 2020, which was Beu's response to Alicea's directive. (R-63.)

Prosecutor Webb-McRae sent a letter to Deputy Chief Pedro Casiano on March 12, 2020, advising him that there would be an audit of the VPD IA records by her office. (R-68.) She forwarded this letter to Richard Burke of the AG's office advising them that the letter had been served. (R-68A.)

Mike Benson, former associate solicitor for the city wrote Prosecutor Webb-McRae a letter on March 25, 2020, with a number of attachments including R-72, R-73, R-74 and R-75. (R-71.) As of this date, Mr. Gelfand was still conducting his employment investigation and had not yet received the IA files and Mr. Benson was seeking authorization for the release of the files to Gelfand. (R-71.) When the prosecutor's office notified the city police department that they were taking over the IA function, she made the law enforcement executive in charge of the IA function Chief Necelis, who was the former IA executive officer for the State police, who knows what to do and not to do. She was not certain if she had to direct him to turn over the files, but he was handling the function. (R-77.)

Kevin Guynon, her executive assistant prosecutor, declined criminal prosecution of the Austino complaint against Gelfand and administratively closed the file as of September 18, 2020. (R-89.)

On May 22, 2020, Harold Shapiro of the CCPO authorized the release of the IA files that were referenced in Gelfand's affirmation, subject to limited use. (R-83.)

Prosecutor Webb-McRae is the chief law enforcement officer of Cumberland County and charged with overseeing the police departments within the county, carrying out the directives of the Attorney General in the county, and prosecuting criminal offenses. Her office has an oversight function over the IA department of the police department. Her directives regarding IA investigations are binding on law enforcement personnel in her jurisdiction, even if a police officer disagrees with it.

Ms. Webb-McRae reviewed Chief Cuff's IA investigation in the Josh Sheppard matter in reaching her conclusions. (R-155.) Chief Cuff was her chief of staff and in charge of all of the administrative staff at the office. Cuff conducted professional standards investigations for her office and had extensive experience in IA as a law enforcement officer himself. She sent Mr. Tonetta a letter informing him of the final disposition of the prosecutor's office with respect to the Sheppard investigation, wherein Chief Beu was exonerated of the allegations of wrongdoing. (R-152.) Exonerated means that the alleged conduct occurred, but it was not a violation of the law, rule or regulation. She reached her conclusion based on two reasons, that Beu did not have a conflict of interest as defined by the Vineland policies and that a review of Officer Sheppard's discipline was proportional compared to other officers who faced the same type of disciplinary charges. In response to Webb-McRae's letter to the city advising them of her disposition, she received an email from Mr. Tonetta that was very curt. (R-153.) The second full paragraph on the second page of the email starts "Based upon the above, I assume you must have misused the word exoneration." Webb-McRae did not misuse the word exoneration in her letter. Mr. Tonetta's email asked her to reconsider her decision. Webb-McRae replied to Tonetta's email in her email of September 5, 2019, and explained in further detail why she did not find a violation of the applicable VPD policy contained in general order 2015-010 on fraternization and relationships. (R-164.) She determined that Chief Beu did not have a personal relationship with Josh Sheppard as defined in the general order. Mr. Tonetta referenced a citation to the State Ethics Commission Uniform Ethics Code that governs state officers and employees, but she did not know if that applied to local police officers. She was not familiar with the Local Government Employees Ethic Code. She recalls reviewing the recommendations in Chief Cuff's report wherein he stated he would not even have disciplined Sheppard under the circumstance, based on Cuff's experience as an IA officer, but that was not what the prosecutor's office

was deciding. Mr. Tonetta responded to her email in R-155 and towards the end says: "You obviously fail to see the conflict. In the future let's try to be a little more civil." In R-156, at the top of the email from Mr. Tonetta to Prosecutor Webb-McRae dated September 10, 2019, he is asking her to reconsider her decision. Her September 9 email to Mr. Tonetta stated "I am in receipt of both of your emails. I called your cell phone and attempted to leave a message but your mailbox is full. I reached out to your office twice, second time requesting a call back by the end of the day as I am out of the office tomorrow. I was going to discuss my thoughts and the future on how this matter should be addressed in light of your concern." She does not believe he ever returned her phone call. Mr. Tonetta wrote to the Attorney General in reference to Prosecutor Webb-McRae's decision. (R-157.)

Webb-McRae wrote to Tonetta regarding Director Alicea receiving details of the Sheppard IA investigation during the investigation. "Per the policy, Director Alicea cannot direct anyone to release information about a confidential IA file. Accordingly, asking me for a report about an IA investigation was an inappropriate order and should not have been complied with." Beu was copied on this letter. (R-152.) According to the Prosecutor, Beu would be allowed to comply with an order from Director Alicea to turn over an IA investigation because he is the Chief. Alicea could direct that a file be sent over, but because of the IAPP Beu would have to go through the analysis whether it should be turned over to an outside authority. Prosecutor Webb-McRae directed that with respect to IA files concerning Chief Beu himself, those requests were to be made to Prosecutor Webb-McRae and not to Chief Beu. (R-152.)

Referring to Mr. Tonetta's September 10, 2019, email he says, "Is insulting at best and asserts some credibility to the chief's CEPA claim in which he uses this situation as an example of retaliation because he's exonerated from a situation which was submitted for you to review at your direction." (R-156.) Her decision was not influenced by Chief Beu's CEPA claim, and she doesn't know if she ever read his CEPA claim. She was not exonerating Chief Beu in the Shepard case for the purpose of lending credibility to any complaint Chief Beu had against the city.

The prosecutor's decision was that the allegations against Chief Beu regarding his daughter Kim Beu were unfounded. The investigation revealed that Sgt. Harris and Captain Bowers specifically wanted Kim Beu for the juvenile unit, and they wanted a female in the unit and wanted the unit to reflect the community. She found Bowers statement to be impactful because Bowers did not care for Chief Beu and would not have done him any favors.

The prosecutor's staff that conduct the investigation make recommendations to Prosecutor Webb-McRae, who reviews their report and then makes the final determination as to what the outcome of the IA investigation is going to be. Ron Cuff's recommendation in the report stated that false information was provided by Director Alicea in connection with this investigation. (R-207.)

Ron Cuff prepared a report on the investigations into the Kim Beu and DeMarchi matters and that was something that Prosecutor Webb-McRae relied on in reaching her ultimate conclusions. (R-114.) The prosecutor's office issued a declination letter regarding the Kim Beu and DeMarchi matters having decided the matters were unfounded. (R-110.) When the prosecutor's office is considering criminal prosecution, it considers whether they can prove their case beyond a reasonable doubt. In regards to an IA administrative investigation they would utilize the preponderance of the evidence standard. Even considering the allegations regarding Chief Beu by DeMarchi by a preponderance of the evidence standard, she still reached the determination that the allegations were unfounded.

The unfiled, undated civil complaint alleges that Beu made comments at a Phillies game in the spring and then in August 2017. (R-1, paragraphs 42-45.) Captain Austino brought the prosecutor's office a copy of the unfiled, undated complaint sometime in November 2018. Even if the statute of limitations for harassment was one year and even if this conduct constituted harassment, by the time the prosecutor's office found out about it, the statute had already run anyway. In reaching her decision about the DeMarchi matter, the prosecutor did not even consider it a close call. The first thing was that nobody confirmed that the statements were made, it was he said, she said. Another thing that stuck out with Ms. Webb-McRae was that when DeMarchi was interviewed he said that

he was called over by Chief Beu and his wife was already there, and Chief Beu said something sexually derogatory to his wife and that he then walked away and left his wife. In the prosecutor's opinion, she does not think that any man would leave his wife at the scene of where the inappropriate thing was said and then walk away from it. There also was a second incident DeMarchi reported when he went to see Chief Beu in his office and they discussed this all again and that is when DeMarchi claimed Chief Beu made the statement about having DeMarchi's daughter. They interviewed the chief's secretary, Ms. Adams, regarding the second conversation in the chief's office and she did not hear anything what DeMarchi was claiming. There were numerous people who said there is joking that goes around with maybe your wife or whatever, but nobody talks about anybody's daughter, and you would have expected somebody's reaction to saying can I have your daughter to be one of disgust, outrage, and immediate attention, and it did not seem like any of that happened. In addition, when others were interviewed about this, she specifically remembered Cardana, they all said DeMarchi was obsessed with getting this promotion and when Cuff went through the analysis, he was not going to be eligible for the promotion as he was number five on the list and there was no position available at the time. She reviewed her previous testimony and believes there was an email by DeMarchi saying he was trying to get this position, it just did not seem credible in any way, shape or form and it really resonated with Webb-McRae that he told the prosecutor's office that Beu said something derogatory about his wife and then he walked away and left his wife there. Her written conclusions with respect to the DeMarchi and Kim Beu matters were set forth in R-115. She did not reach that decision in order to protect or favor Beu and no one attempted to influence her decision. R-115 sets forth the reasons for the prosecutor's decision. There were allegations that he favored his daughter and there were things he was not even involved in, like the background process and hiring process that was under Chief Codispoti. One of the allegations was that the chief somehow was able to favor his daughter at the time she was hired even though he was not the chief at the time. (R-115 at 2-3.)

The fourth paragraph in the directive R-47 directly conflicts with the instruction she gave in her disposition of the Shepard matter, that is, that any request for Chief Beu's IA files be directed to her. At the top at the end of the first paragraph it states "I am directing you to respond on or before Monday, January 27, 2020 at 10 a.m."

R-48 is Chief Beu's email to Edwin Alicea January 27, 2020, at 9:09 a.m.

R-59 is Webb-McRae's letter.

She looked at the January 24, 2020, directive (R-47) and the chief's response to same. (R-48.) R-49, last sentence of the second paragraph states "IA files for which you are the target is the only addition per my directive and the only addition to Mr. Gelfand's list attached here again for your review." This contradicts with her directive in her Sheppard closure letter.

R-51 is Chief Beu's email to Alicia dated January 27, 2020, at 8:05 p.m. which is the email that was referenced in R-59. In R-51 Beu indicates "In the present case thus far I have not found that good cause exists." Then it goes on to list the reasons for Chief Beu's decision. As indicated in Webb-McRae's letter of R-59, as of January 27, 2020, Chief Beu in writing stated he found that good cause did not exist and had listed reasons for his decision. R-59 also references a January 28, 2020, communication (R-52) which states "Based on the information you have now provided I'm withdrawing the directive from yesterday afternoon as to the immediate delivery of the files at issue, at least temporarily to evaluate the information you supplied."

Webb-McRae's letter (R-59) also references a 7:11 a.m. email and attached directive of January 29, 2020, (R-53), wherein Alicea purports to recuse Chief Beu from making a decision whether or not to release the IA documents and assigned Deputy Chief Pedro Casiano to make the determination. This is in conflict with the fact that the chief law enforcement officer can release things and if it is about him it should come to her.

Webb-McRae did not have any independent recollection that Chief Beu reached out to the city solicitor or deputy city solicitor for assistance in responding to Alicea's directives.

A February 19th directive from Alicea to Beu regarding IA files had an attachment with redactions. (R-56.) R-57 is the same directive without the redactions.

A January 31, 2020, letter from Assistant Solicitor Mike Benson to her First Assistant Harold Shapiro confirmed a conversation they had and that the prosecutor's office position was that they would make the decision about anything related to Chief Beu. As to anything else, they were leaving it up to Chief Beu to evaluate and make the decision under the applicable IA guidelines. (R-55.) Webb-McRae wrote a letter of February 23, 2020, to Chief, Beu copying Director of Public Safety, Alicea, City Solicitor Richard Tonetta and Chris Leusner, President of the NJ Association of Chiefs of Police. (R-59.) The police chiefs' association had been in contact with the prosecutor's office expressing their concerns about the whole situation. They had written her a letter, and she responded after consulting with the AG. She stated her opinion regarding a conflict of interest with Mr. Gelfand. (R-55 at 3.) She also discussed the request for the prosecutor's office to supersede the IA function of the police department. (R-55 at 4.) In declining to do so, she stated that seeing no malfeasance in neglect related to the same, at this time it was not appropriate for her to insert herself in order to provide Beu cover. In other words, she was advising them that she was not going to make the call for Chief Beu. Webb-McRae continues in the letter to lay out the things that the chief should consider in making his decision whether or not to release the documents requested by Alicea to Gelfand. (R-55 at 4-6.) She specifically indicates that he is entitled to conduct a good cause analysis to determine whether the files should be released. She also indicated that he could set conditions upon which they may be released. She also told him that he can require the request to provide specific reasons for each file requested. She also instructs him to be mindful of the confidentiality of the IA process and refers to the section that specifically guides the chief to "grant such access sparingly given the purpose of the IA process and the nature of many of the allegations against officers." (R-55 at 6.) Webb-McRae also indicated that the AG has given a law enforcement executive the sole and complete discretion to make a good cause analysis as to whether IA file should be release and under what terms and the city should be mindful of this when threatening discipline while demanding access to IA records. (R-55.)

On February 24, 2020, Alicea issued another directive to Chief Beu, the last paragraph stating: "That being said, I reassert my directives to turn over Internal Affairs files in reference to the above past directives for your review. I expect the requested

Internal Affairs files to be delivered to the Solicitor's Office by 9:00 a.m. February 25, 2020. Your failure to do so shall be considered intentional defiance of this directive. Please be guided accordingly." (R-60.) To the extent that this directive did not allow the chief to determine the files should not be turned over, would conflict with Webb-McRae's February 23, 2020, letter advising him to do the analysis under IAPP 9.6.

An email dated February 25, 2020, 8:59 a.m. from Chief Beu to Alicea and others including herself references Alicea's February 24, 2020, directive. (R-61.) Chief Beu indicates in this email that he is providing reasons and setting conditions and doing the 9.6 analysis based on recommendations provided by the county prosecutor. The preliminary notice of discipline was issued the next day, February 26, 2020, suspending Chief Beu as chief. (J-2.)

Mr. Benson requested access to the IA files in his letter of March 25, 2020. (R-72.) He attached a nine-page memorandum in support of the City of Vineland's request for police IA documents setting forth the rationale for why the city wanted access to the documents. (R-73.) An email from Harold Shapiro to Mr. Benson authorized Gelfand to access the IA files. (R-83.) It was three months after Chief Beu was suspended that the City of Vineland were able to satisfy the prosecutor's office that they met the conditions for release of these IA files.

Todd Gelfand testified on behalf of the respondent. Gelfand is a municipal government attorney who performs internal employment investigations and prosecutes administrative disciplinary actions involving police personnel, among other things. Gelfand had previously represented the City of Vineland in at least two other matters.

In or around May or June 2019, Gelfand was requested by the City of Vineland to perform an investigation into a series of allegations raised by both the PBA and officers within the VPD. Rick Tonetta, the city solicitor at the time, reached out to Gelfand in response to a draft lawsuit he had received from the PBA, and cross-complaints brought by Captain Adam Austino, Rudy Beu, and Thomas Riordan against the PBA. Gelfand recognized this draft complaint from the PBA as R-1. The PBA attorney told Gelfand

towards the beginning of his investigation that the PBA never actually intended to file this complaint.

Gelfand denied that he had any conflict of interest based on his previous representation of the city when he took on this investigation. Gelfand never told Austino that he had a conflict of interest conducting this investigation. Gelfand had represented Beu in a previous case but could not recall when that case was terminated or when his representation of Beu terminated. Gelfand was shown the PACER docket report for the litigation (P-12) and agreed that that case terminated on July 22, 2021. However, Gelfand believed that because the claims against Beu had been dismissed multiple times in that matter, Beu was not an active party in that case, and Gelfand did not believe his investigation violated the Rules of Professional Conduct. To Gelfand's knowledge, neither Beu, Austino, nor anyone else ever filed any ethics charges against him for this investigation.

Gelfand also had no reason to believe that his law partner Vanessa James's representation of the Cumberland County Prosecutor's Office in other, inactive litigation would conflict with his present investigation, since he had nothing to do with that case. Gelfand had never been asked to investigate the prosecutor's office as part of his investigation. Additionally, Gelfand believed the Bernard case had been dismissed and not yet re-filed in State Court by the time he first spoke with the CCPO in August 2019. He believed the Bernard matter had been reinstated by the time he took the witness stand in the departmental hearing for this matter. On re-cross, upon being shown the dismissal order (P-17) in the Bernard litigation dated March 23, 2020, Gelfand agreed the Bernard case was not dismissed as of the letter from the prosecutor of February 23, 2020.

After he was retained by the city in about May 2019, Gelfand began conducting interviews of those involved in the complaints, including Austino. Gelfand initially requested that Austino provided him documents that support the facts of his complaint, including, for example, IA files from Chief Beu mentioned in the complaint, and documentation related to the "discontinuation" of the street crimes unit. Gelfand's approach was to review all of the documents he could in order to gain context for these complaints and thus be able to interview the witnesses intelligently.

At the outset of the investigation, Gelfand met with Tonetta and received the prosecutor's report into the wiretap matter from him. This refers to the allegation that Austino listened in on patrol cars using the MVR system. Gelfand believes he received the report by hard copy at this first meeting with Tonetta, and that he received it legally.

Tonetta had this report in his possession because it was directly related to the claims in the PBA lawsuit, and it was also relevant to Austino's retaliation complaint. Exhibit R-204 was the email Gelfand was eventually given or found showing that Tom Riordan from the VPD had written to Ronald Henry of the CCPO asserting that the city solicitor was asking for a copy of the wiretap report. In this email, Henry had authorized Tonetta's office to review the report. It was at this same May 2019 meeting with Tonetta at the beginning of his investigation that Gelfand received the draft complaint.

Gelfand did not have any reason to believe that the files he received were received illegally. At one point, there was an investigation into Gelfand for allegedly illegally obtaining these files. It was Chief Beu who first told Gelfand he was under investigation for this. The CCPO told Gelfand it was necessary to investigate him to determine whether he committed contempt of a federal court discovery confidentiality order in the White case by using the IA file in that case illegally for the internal investigation of these HR complaints to allegedly harass and intimidate witnesses. This investigation concluded without any kind of charges related to improper possession of this document. Additionally, after reviewing the files from the White matter later, Gelfand discovered the report at issue was not even among those he had gotten in the White case.

The first time Gelfand communicated with Rudy Beu about the investigation and the files he sought was a June 26, 2019, email. (R-3.) Gelfand's intention in reaching out at the time was to receive authorization to internally use and review the IA files that were implicated by the cross-complaints. According to the IAPP, Gelfand thought the chief of police was the proper person at the outset to give him authorization to review those. Gelfand denied that in this email or ever during the investigation he had sought "unfettered access" to the VPD IA files. This initial email request did not identify any

specific records by name, file, or number. However, Gelfand understood Beu to be aware of the allegations he was reviewing.

Beu responded on June 27th (R-4), informing Gelfand he would have the request reviewed by counsel. Gelfand never found out who that counsel was at that time. Beu did not identify his counsel to Gelfand until he heard from Mr. Bell in September of 2019.

On July 16, 2019, Gelfand received an email from Beu. (R-4C.) Beu explained the procedure he wanted to follow for the IA files, including that he would consider permitting Gelfand access to files under the discretion or supervision of an IA officer, naming Sgt. Candelario. Gelfand agreed that this response was “entirely fair.” Gelfand responded to Beu, trying to identify the IA matters he believed he needed to review. (R-4D.) This was “a little bit tricky” because without having seen the IA files, Gelfand could not identify them by number and instead had to describe them. Among the list of files that Gelfand requested in this email were “VPD IA reports.” Gelfand also identified to Beu in this email that he already had the CCPO report from Henry for the wiretapping allegations (the “wiretap report”). Beu did not express any concern that Gelfand had that file at the time or indicate that he could not produce the requested IA files because Gelfand had the wiretap report. Beu responded to Gelfand’s email advising him he had forwarded the request to the New Jersey State Association of Chiefs of Police for guidance. (R-4E.)

On July 17, 2019, Captain Austino filed a grievance (R-4F) from the Vineland Police Captains Association regarding Gelfand’s investigation. Gelfand held a phone conference with Beu on the same day, during which Beu informed Gelfand of the grievance. Gelfand did not recall Beu raising any of the complaints contained in the grievance to him before this date.

Gelfand spoke with Beu over the phone again the next day, July 18, 2019. (R - 168 at 34.) This phone call lasted fifteen or twenty minutes. Gelfand was in a car but had pulled over to take notes. (R-6.) Beu told Gelfand he agreed with everything in Austino’s grievance.

Beu told Gelfand that city administration was interfering with his duties as chief of police, including by creating an extra captain position and a deputy chief's position. Beu told Gelfand that the promotion process was fixed against Austino in favor of the city administration's "buddy," including by the addition of the fourth captain position so that the city administration could give a chosen person enough time in captain to compete with Adam Austino for deputy chief. Beu discussed how he was called to CCPO to talk about an alleged inappropriate discipline matter which Gelfand came to learn either had to do with Sheppard or Adam Shaw. Beu also referenced that "union cronies" get lenient discipline, which was frustrating Beu "out the gazoo." Beu referred to Gelfand's investigation as "rigged" and that Beu agreed with Austino's allegation that Gelfand could not be trusted. Specifically, Beu told Gelfand that both he and Austino felt that Gelfand himself was trustworthy, but they did not trust the people to whom Gelfand would give the information, because the whole thing was "rigged" to give the administration what they want. Beu told Gelfand he had a working but distrustful relationship with the city administration's "entire process," not specifically with Gelfand.

Beu and Gelfand also discussed Gelfand's request for IA files—specifically, the limitation offered before, that Gelfand would only be able to potentially review certain files under the supervision of an IA officer. Beu and Gelfand also discussed the proposal that Gelfand could get permission to view the IA files but be restricted on paper from releasing them to certain people in city administration if Beu was concerned about that. Beu also reported to Gelfand what the New Jersey State Association of Chiefs of Police had told him about the IA request: that it was in Beu's discretion to tell Gelfand whether he can or cannot review the documents. When Beu expressed that he and Austino did not trust that whoever would get the results of the investigation would be fair, Gelfand told Beu he would see what he could do about the results being delivered to someone other than people being accused of harassment or retaliation in the investigation.

Finally, Beu and Gelfand also discussed the DeMarchi matter during this phone call. Beu told Gelfand that he had seen the lawsuit against him related to the DeMarchi comments, and because of that, he knew what he was being accused of in that lawsuit. Gelfand asked Beu if he had ever admitted to Tonetta that he made the comment about DeMarchi's wife as alleged. At first, Beu told Gelfand he never talked to Tonetta. Later in

the conversation, though, Beu told Gelfand he did speak with Tonetta, and had told Tonetta he could have said something like that, but if he did, he meant it as a joke. Beu told Gelfand that Tonetta did not have Beu under oath and did not record that conversation. Beu questioned why, if he was alleged to have made that statement in April, the issue was not raised until it looked like Ron DeMarchi was not going to be reached on the civil service list. Beu claimed Tonetta had concluded that DeMarchi was a liar, because when DeMarchi came in to see Tonetta about the comments, at first, he only mentioned Beu's alleged comment about having sex with his wife and only followed up later via email to mention the comment about the daughter. Beu also told Gelfand that the PBA claimed Riordan also made some sort of comment about the wife at the baseball game. Gelfand told Beu this was contrary to what he had learned when he spoke with Tonetta, telling Beu this issue might come down to Beu's word against Tonetta's.

Beu and Gelfand agreed that the next step after this call was for Gelfand to ask the county prosecutor's office how they should proceed in light of the grievance. Specifically, Gelfand offered to go to Harold Shapiro next to ask for his office's opinion, taking Beu out of the decision. Beu told Gelfand he would do whatever he could to cooperate.

Accordingly, right after this phone call with Beu, Gelfand called Howard Shapiro. Gelfand explained his investigation to Shapiro and how he had asked for certain IA files that he needed for his investigation from Beu, who had custody and control of the files. He also explained the grievance that had just come out. Shapiro explained to Gelfand that his office ordinarily only gets involved in IA matters for Vineland if there's an allegation of criminality. Gelfand told Shapiro he would confirm his request for the prosecutor's office's guidance in writing. (R-7; R-8.)

Gelfand again denied that he had ever sought, at this point or at any other during the investigation, "unfettered" access to the Vineland IA files. He understands "unfettered access" to mean that he could access and examine any IA files he wanted, without providing a reason or explanation, for example, if he were performing a general audit of the department's IA process. However, in this investigation, Gelfand was only looking for specific files that were implicated by the complaints and the investigation. Even for the

individuals who were implicated by the complaints, he did not seek unfettered access to those individuals' files, only those files implicated by the complaints he was investigating.

On July 29, 2019, Gelfand sent a letter to the Cumberland County Assistant Prosecutor Harold Shapiro. (R-7.) In this letter, Gelfand stated that Beu "wishes to cooperate and be interviewed" and that Gelfand had "not sensed any bit of obstruction." Gelfand also wrote that as of that point, he and Beu had agreed to put the IA review issues on hold. About a month later, Shapiro responded. (R-9 and R-10.) Gelfand found Shapiro's response ambiguous: it could have meant that Beu was being directed not to give Gelfand the documents, or that the office was not directing Beu one way or the other.

On September 3, 2019, Gelfand emailed Shapiro back (R-11) expressing his confusion about the letter. Gelfand copied Austino, Beu, and Doug Long on this email. When in this email Gelfand referred to officers going public with an allegation against the Chief, he was referring to the DeMarchi matter. Gelfand referred to this matter in this email because the prosecutor's office had been given a copy of the PBA complaint, and Gelfand did not want to step on the prosecutor's office's toes if they were going to investigate this matter, so he sought guidance from the prosecutor as to whether he should stay away from the DeMarchi matter or go ahead and investigate it.

Gelfand, Shapiro, and Webb-McRae then had a phone conference in which Shapiro and Webb-McRae told Gelfand several times they did not want anything to do with the decision regarding the IA files, and that it was up to Beu to decide what to do with Gelfand's request to review the files, in accordance with the Attorney General Guidelines.

Gelfand sent emails confirming his understanding of this conversation with the prosecutor's office. (R-12 and R-13.) In his email to Beu (R-13), Gelfand informed Beu the prosecutor's office had not meant Gelfand could not have the files, but rather, that the CCPO was not going to make the decision. Gelfand followed up with Beu again about the status of the files and Beu's decision. (R-14.) At Gelfand's request, Shapiro confirmed Gelfand's understanding in writing on September 17, 2019, (R-15), although Gelfand believed the office was more emphatic about wanting to be left out of the decision during the phone conference than was communicated in this letter. On September 18, 2019,

Gelfand forwarded this letter from Shapiro to Beu and Rick Tonetta. (R-16.) In this email, Gelfand also asked Beu who his personal attorney was, since Beu had mentioned one in a September 9, 2019, conversation with Gelfand.

On September 24, 2019, Beu indicated he had retained counsel. (R-17.) In this same email, Beu also forwarded a grievance Austino had filed (R-4F) and indicated that the prosecutor's office had opened another complaint against Beu. Finally, Beu also told Gelfand the CCPO would have full access to the department's IA files. As of this point in time, Gelfand did not have a decision as to whether he could access the IA files. Gelfand was confused by the mixed messages from the prosecutor's office, who had told him they were not going to make the IA files decision but at the same time, was investigating something from the same draft pleading.

On September 24, 2019, Gelfand sent Beu and Austino an update (R-19), the purpose of which was to clarify to Austino that Gelfand was investigating both sides, including both Austino's complaints and the complaints against Austino. Gelfand went into detail about how he had received the CCPO wiretapping investigation report by Detective Ron Henry. Neither Beu nor Austino told Gelfand in response he should not have that file. A few minutes later, Gelfand sent another email to schedule interviews. (R-20.)

Also on September 24, 2019, Gelfand learned for the first time the identity of Beu's counsel, Jim Bell, through an email from Beu. (R-23.) Gelfand and Bell set forth their relative positions in a series of emails. (R-27.) On October 4, 2019, Gelfand emailed Bell again to schedule an interview with Beu and to express that he thought Beu wanted to have an interview to go on the record with his side. (R-28.) Gelfand denied that in this email or ever before then, that he had suggested Beu or anyone would be fired for this.

On October 10th, Gelfand emailed Bell to get a "straight answer as to whether Chief Beu would sit for an interview" and whether he could review the files. (R-33.) Bell and Gelfand continued to exchange emails. (R-34; R-35; R-37.) When Gelfand referred to the fact that he had been trying to "square this issue" for three months, he was referring to the decision regarding his access to the IA files. (R-35.) However, around this time,

Gelfand also received an email from Shapiro referencing that he should hold off on an interview with Beu while they were investigating the DeMarchi piece. (R-36.)

Bell asked Gelfand to identify “with specificity” the IA files he sought and the mechanics of how he planned to review them once the prosecutor’s investigation was completed. (R-37.) Gelfand testified that by this point, he had identified the specific files and mechanics several months before and repeatedly thereafter, pointing to his September 25, 2019, email to Bell (R-27 and R-8) as an example. Gelfand responded on October 22, 2019, (R-38) and provided a description of several IA files he sought. (R-39.) Gelfand provided the description of files instead of file numbers because he did not have those numbers without being able to access the files. He was not aware of any provision in the IAPP requiring that there be a listing of the file numbers themselves for a request to the chief.

A week later, Bell responded, asking Gelfand how his day was and whether he owed Gelfand anything. (R-40.) Gelfand responded with a list of outstanding files. (R-41.) Bell responded that Gelfand’s descriptions “seemed adequate to allow Chief Beu to comport with the procedures,” but Gelfand did not get the files at this point. (R-41.) Additionally, Bell’s response asked Gelfand whether he could afford competent counsel. (R-41.)

As the investigation continued on without the release of IA files, Gelfand asked several times to put out a directive making compliance with his investigation the order of “somebody that needs to be followed” so that there would be a “specter of insubordination” if this continued forever. Gelfand wanted to avoid any questions of the chain of command in case there was any argument that he was not in the police administration’s chain of command. Thus, six months into his investigation, the November 4, 2019, directive (R-42) asked for compliance with this investigation.

On or around November 15, 2019, Gelfand interviewed Chief Beu, with James Bell present. This interview was not audio recorded, but Gelfand took handwritten notes. (R-211.) Gelfand testified that he produced all of the handwritten notes of his he could find during discovery.

Gelfand and Beu discussed that in this interview, Gelfand was questioning Beu both as a complainant and as a target of Gelfand's investigation. Some issues that were covered during this interview included: the Basir Bey matter; the soda fund; the community policing fund; Casiano and the deputy chief issue; and general staffing issues. Gelfand did not remember speaking with Beu about the Kim Beu transfer during this interview. During this interview, Beu also told Gelfand that Triantos had inappropriately released an IA file that should not have been disclosed.

After Gelfand had initial unrecorded interviews with Finley, Austino, and Beu, Gelfand was able to revise his list of materials he was looking to review and to add items that were not IA files to the list of requested materials. (R-43.)

About a month after Gelfand sent this updated list of requested materials, he and Bell communicated in a series of emails. (R-44.) As of this point, December 16, 2019, Gelfand had not heard anything from Bell or Beu as to whether Beu had decided to release the identified IA files. Bell responded that Beu intended to grant Gelfand access to the documents he sought or "the great majority of them" as soon as Bell could help Beu draft an appropriate letter setting forth the procedures and limits. In these communications, Bell wrote that he would strive to get a letter to Gelfand by next Tuesday, but Gelfand did not ever get a letter from Beu setting forth the procedures of and limits on access or telling Gelfand that Beu was granting him access.

In February 2020, Gelfand learned that two days after these communications with Bell, on December 18, 2019, Beu gave an interview with Ron Henry of the CCPO as part of a complaint against Gelfand and his investigation.

On January 3, 2020, Gelfand wrote to Bell expressing that he had not heard from him since the December 16 email (R-45) and followed up again about three weeks later (R-46), neither of which received any response.

Gelfand helped Director Alicea draft the directives to Beu, in communication with Rick Tonetta. In the January 24, 2020, directive (R-47 and R-47A), Gelfand attached an

itemization of his previously requested IA files. Specifically, Gelfand sought the files in which Beu had been the target of an IA claim because the cross-complaints included allegations of disparate treatment in Beu's application of the IA process. Gelfand thus wanted to know what Beu's own experiences with the IA process prior to becoming chief were like. Additionally, Gelfand thought an investigation into claims against Beu for retaliation might depend on who had accused Chief Beu of violations in the past, because Beu might have had a motivation to retaliate against those who had previously accused him or testified negatively against him.

Gelfand believes that Prosecutor Webb-McRae's statement in R-152, advising Alicea he could not direct anyone to release any confidential information about IA files, was mistaken. Gelfand did not remember Alicea telling him when they were issuing this directive that Alicea had received this letter from Webb-McRae. Gelfand understands the paragraph at the last page of R-152 to mean that Alicea should direct all requests for IA files to the Chief, unless the files involve the Chief himself, in which case the request should go to the prosecutor. The January 24, 2020, directive included a request for files not involving Beu, meaning as to those files, and complied with the prosecutor's Sept. 3, 2019, email. (R-152.)

Gelfand testified that Beu did not provide the requested files or a list of reasons why he would not at this time. Gelfand received a response from Bell, with Beu copied. (R-50.) Gelfand's investigation report did not mention that Beu himself responded to the January 24, 2020, directive before the deadline set by the directive, because it was not significant to him. For example, parts of this response referring to a "third party attorney" made no sense to Gelfand. Similarly, Gelfand did not include Beu's response (R-48) to the Jan. 24 directive because he "thought it was such nonsense that it was irrelevant"—specifically, the idea that six months was not enough time for Beu to consult with his attorney. When Gelfand recommended the insubordination charges against Beu, the charges were not based on one response to one order, but rather, on Beu's conduct over the seven months.

Gelfand agreed he probably wrote the January 27 directive (R-49) but could not say for certain if he did. He testified that the purpose of this directive was twofold: first,

to correct Beu's allegation that the investigation sought unfettered access to IA files; second, to advise Beu that back in September, they had clarified that the prosecutor meant he had discretion to issue the files. The prior directive (R-47) was the request for files, and this directive (R-49) was in response to Beu's reason for not having complied with the request. Beu could have complied with this January 27 directive by turning over his own IA files where he was the target, or by providing an itemized list itemizing that he found no good cause for Gelfand to review his files for some reason that "makes rational and logical sense." According to Gelfand, in theory, if there was good cause, Beu had the option of determining that Gelfand did not have good cause to review his files.

Gelfand agreed that from the beginning, Beu had a minor conflict as to his ability to determine whether or not there was good cause regarding the files where he was the target or subject. That is why Gelfand thought the county prosecutor's office may have been the more appropriate body to determine if the files should be released, but Gelfand had to go through Beu as the chief of police with access and custody and control of the IA files. Gelfand did not know that there was some technical rule that made this conduct a conflict, but he was concerned that a person in Beu's situation would not be the most objective person to be making the good cause analysis. However, Gelfand had no choice but to proceed despite this "little hint" of a conflict.

Beu responded to the January 27 directive the same day. (R-51.) The list of reasons Beu provided were not acceptable to Gelfand. Gelfand did not include this response in his investigation report. This email was the first time Gelfand learned that Beu was claiming Gelfand had improper access to the wiretapping report. Beu had not communicated to Gelfand what Gelfand's alleged abuses were. Gelfand thought it was odd that his alleged abuse of the files was proffered as a reason to deny his access now, and that there was a complaint about this, since nobody in the past three months had told him this was the reason they had relied on denying him access to the files.

Gelfand also drafted the January 29 directive (R-53) for Alicea to issue. At this point, Alicea, Tonetta, and Gelfand had agreed that they should not insist Beu produce the files until they found out what outstanding complaint existed. Gelfand agreed with this directive purports to recuse Beu from making the decision as to the access to IA files,

stating Deputy Chief Casiano should be the one to make the decision. The directive states Casiano may have been a witness in one or more of the investigations but does not appear to be the target or subject of any of the allegations. However, Gelfand agreed that Casiano was one of the targets of the Basir Bey investigation, which was one of the files Gelfand sought. Gelfand does not believe that Casiano ever turned over any IA files as a result of any of these directives. Gelfand has no information or facts to support that Beu ever conveyed this directive to Casiano as directed.

Gelfand reviewed the email from Beu to Tonetta and Benson (R-54) requesting their assistance on how he should proceed with the January 29 directive. Gelfand agreed that he probably did not mention the fact that Beu went to Tonetta and Benson to ask for their legal assistance in his investigation report, because it did not seem relevant to him.

Gelfand initially disagreed that the letter from Benson (R-55) referring to the prosecutor's advice that the city cannot order Beu to release files in which the chief was the target "countermanded" Alicea's order for Beu to turn over the files in which Beu was a target. When presented with the departmental hearing transcript (R-171), however, Gelfand had previously agreed that such an interpretation of the letter (as countermanding Alicea's order) was not a "terribly unreasonable interpretation."

When the February 20, 2020, directive was issued, Gelfand had not received an itemized response to each of the files requested, nor any further information about the nature of the complaint Beu had claimed existed. In this directive, Alicea was asking for production of the files or an itemized response. The city was still pursuing the files at this point because Tonetta, Alicea, and Gelfand all knew that the allegations against Gelfand for having obtained files illegally were false, because they all knew where Gelfand had gotten the report in question from. Since the only reason that had been offered to the city to not release the files was false and inconsistent with earlier promises that files would be released, Beu's proffered reason not to produce was not interpreted as a good faith exercise of discretion.

Gelfand eventually received a February 23, 2020, letter from the prosecutor to Beu. (R-58B.) Beu had never communicated to Gelfand or anyone with the city that he had

received instruction from the prosecutor telling Beu he did not have to do anything else with this. Beu also never told Gelfand he did not understand the IAPP, good cause analysis, or how to respond to a request for IA files generally.

Gelfand himself received a copy of a letter from the prosecutor (R-59) on or around February 23, 2020. In this letter, the prosecutor states that Gelfand has a conflict of interest representing the city in this matter. When asked why he did not describe this letter in his report, Gelfand answered he did not discuss its contents because the letter had been written to Rick Tonetta, the same person to whom his report was written. Additionally, Gelfand had attached this letter as an exhibit to his report. (Exhibit 72 in R-168.)

Gelfand could not say for sure whether he had drafted the February 24, 2020, directive. (R-60.) Gelfand acknowledged that outside of the reference to the prior directives, there was nothing in this correspondence telling Beu he could provide a written reason for withholding any files.

Gelfand understood Beu's response (R-61) to this directive as agreeing to turn over some non-IA document items, but he did not understand Beu response to authorize the release of any of the IA files he sought. Beu did say he was making at least some files available as requested in Section 1, item A of his response. Gelfand ultimately never received any IA files directly from Beu. Having reviewed Beu's response and being familiar with the history of the requests for documents and directives over the last eight to nine months, Gelfand was not satisfied that Beu provided a good cause analysis or reason for not providing the files. The only explanation that Beu gave was the ongoing complaint that the CCPO was investigating. Beu's responses to the files requested (R-62 and R-63) included the same response for a number of files: "Pending good cause analysis of pending submitted reason." However, Gelfand had submitted written reasoning for why he needed those files multiple times since May 2019.

At no point in any of Gelfand's conversations with Beu did Beu indicate he could not provide Gelfand with the IA files because of an issue between Alicea and Homeland Security. Gelfand never got a suggestion that Beu could not engage in good cause

analysis or turn over the files because of some confidential investigation until after, when administrative proceedings were happening.

On February 25, 2020, Gelfand produced the first of several reports related to this matter. (R-168.) This report sets forth the chronology of the most significant events of his investigation. The report begins by detailing his retention, the initial complaints, and the initial files that he deemed necessary to be obtained, including the day-by-day efforts he made to obtain those IA files. Gelfand submitted the report to Mr. Tonetta. Gelfand did not regularly report directly to the mayor, and believes he spoke with the mayor during this time frame two to three times.

Page 21 of this report references questions from Captain Austino about the scope of the investigation which were sent to Tonetta and then forwarded to Gelfand. Gelfand testified that he was retained and paid for by the City of Vineland. Another of Austino's questions referenced "JIF" and whether the investigation was within the control of JIF. Gelfand testified he never told anyone he was paid for in this investigation by JIF, which is the Joint Insurance Fund. Gelfand knew the city had requested that JIF contribute to the cost of the investigation and, because the complaints by the PBA were "put into a threatened lawsuit," the investigation was reported to JIF as "potential litigation." Gelfand was also a party to a telephone conference between Tonetta and JIF discussing this issue. He testified that it was ordinary practice for the city to forward this kind of information to this insurance carrier.

Pages 69-71 include Gelfand's recommendations to the city with respect to proposed insubordination charges. Pages 61 to 69 include Gelfand's recommendations as to the DeMarchi matter. Gelfand had reviewed the prosecutor's office's files of the DeMarchi and Kim Beu investigations, which had been provided to him by that office in February 2020. No one from the prosecutor's office expressed any reservations to him that he was receiving those files. Gelfand also conducted certain interviews related to DeMarchi's allegations.

The four people allegedly present for the DeMarchi incident in April 2017 were Beu, Tom Riordan, Ron DeMarchi, and Suzette DeMarchi. In preparing for his report, Gelfand

spoke to Rick Tonetta, had information from his July 18 phone call with Beu, and had informally interviewed Beu (although he was not permitted to record the interview). Gelfand had several conversations with DeMarchi but only recorded one. (R-99.) Gelfand did not interview Suzette DeMarchi. Gelfand also did not interview Tom Riordan, Bill Riordan, or Stephanie Adams (Beu's secretary) in connection with the DeMarchi matter before issuing this report. Gelfand did not reach out to these people because they were not alleged to have any personal direct observation of any comments.

Gelfand did not mention Stephanie Adams in his report, although he was familiar with her interview with the prosecutor's office. When presented with Adams's interview transcript (R-113) from the departmental hearing, Gelfand testified that her statement corroborated DeMarchi's allegation that on a particular day, there was a conversation about promotions between Finley, Beu, and DeMarchi, but Gelfand did not reference her testimony because he thought the evidence he cited was stronger. Adams was not alleged to be a witness to any comments. Gelfand claimed that according to Beu's interview, Beu had walked out to the truck and saw the kids in the back on the particular occasion during the conversation where the comment about DeMarchi's daughter was allegedly made, and Adams did not testify that she followed the men out of the office to the truck.

DeMarchi's testimony from the recorded interview (R-99) that Beu was seated in a chair when Beu made the comment about the daughter was not significant to Gelfand. He thought a person would remember hearing a comment about having sex with one's daughter for a promotion better than they might remember details such as whether the door was open or closed when the comment was made. Gelfand believed that Beu and Finley had also told Gelfand that DeMarchi was coming into Beu's office every day to talk about a promotion, and Beu had told Adams not to let DeMarchi into his office. Gelfand testified there was no explanation as to how DeMarchi had gotten into Beu's office, past Stephanie Adams who was supposed to be acting as the "gate keeper."

Gelfand possessed copies of Tom Riordan's and Captain Finley's recorded interviews with the prosecutor's office at the time that he issued his report. He agreed that both conflicted with DeMarchi's allegations. Gelfand did not specifically recall

whether either of these interviews were included in his report. Gelfand believed interviews of those who were not alleged to have heard the comment were not relevant. Gelfand explained that just because thirty people were present at the game did not mean it happened, does not mean that it did not happen. To him, this just proved there were a lot of people there, some of whom did not hear it.

In making his recommendation, Gelfand factored in the CCPO's conclusion that the DeMarchi allegation was "unfounded" and weighed that conclusion against the evidence in front of him. At the end of the day, however, he was still more confident in his conclusion recommending the charges. Gelfand disagreed with the CCPO's assessment that DeMarchi's version of the story was not credible because at the time the alleged comments were made, DeMarchi was number five on the civil service list and was therefore not eligible for promotion. According to Gelfand, about a month later but before making the complaint to Tonetta, DeMarchi was already within the top three on the civil service list and thus among the group which could have been promoted. Gelfand also believed it would not make sense for someone to fabricate something like this that would put his wife in the center as a fact witness. To Gelfand too many people would have to be lying for DeMarchi's allegation to be untrue.

Gelfand also based his recommendation on information Tonetta had provided to him. According to Tonetta, about a week or two before DeMarchi came to Tonetta, Beu made a joking comment to him along the lines of "The guys are always bugging me about who's getting promoted. I told one of them 'I'll promote him if I could have sex with his wife.'" Then, Tonetta got the complaint from Ron DeMarchi around August or September 2017. After Tonetta met with DeMarchi, Tonetta asked Beu about the comment, and Beu admitted to making the statement, saying he had a good, joking relationship with the men. Beu had told Gelfand the same thing during their July 18, 2019, phone call—that Beu could have made such a statement because of his relationship with the men. It did not make sense to Gelfand that Tonetta would lie about this sequence of events.

Finally, Gelfand also testified that he believed DeMarchi's claim was credible because he had noticed Beu had a certain manner of speaking. Specifically multiple people told Gelfand Beu fairly routinely called Terry Hall "T-Bag," which Beu denied

saying, making Beu less credible to Gelfand. Gelfand himself never heard Beu refer to Hall as “T-Bag.”

Gelfand recommended bringing charges as to the DeMarchi matter at the same time as the IA-related insubordination/obstruction charges because of the forty-five-day rule. Gelfand was aware the insubordination charges were going to proceed and was concerned that if the city had sufficient information to charge other related matters, they might face questions or concerns related to the forty-five-day rule. At this point, Gelfand had seen enough throughout the investigation to believe that disciplinary charges could or should also be sustained based on the DeMarchi matter.

Gelfand did not recall Beu ever indicating to him that Beu had had an encounter with Ron and Suzette DeMarchi in a Wawa. If Beu had told Gelfand that, Gelfand would have gone back and asked the DeMarchis.

Gelfand could not specifically remember whether his report included any conclusion about the allegation that Beu said something inappropriate about DeMarchi’s daughter.

Gelfand agreed that Beu was terminated the day after submitting his response to the February 24 directive. (J-2.) Gelfand did not believe that Beu had complied with the directives issued by Director Alicea requiring Beu to provide access to the files by certain dates or to itemize his objections.

Days later, Beu filed a lawsuit against Gelfand. (R-64.) Gelfand was dismissed as a defendant. Around the same time, around March 2020, Beu filed a lawsuit in Superior Court concerning the charges against him. (R-65.) Gelfand prepared a certification in connection with that litigation (R-79), in which he purported to outline much of the history of the charges against Beu. Gelfand had also provided a supplemental certification. (R-87.) That case was dismissed on procedural grounds.

In February 2020, before the charges were issued, Gelfand received a copy of the CCPO’s IA files related to Beu regarding the Kim Beu and DeMarchi investigations. As

to Vineland's files, Gelfand did not get those until May 2020. (R-83.) As of March 25, 2020, Gelfand was asked by the city to prepare a memorandum in support of the city's request for certain IA files to send to the prosecutor's office. Gelfand produced this memorandum (R-73) and included attachments (R-74; R-75; R-76.) Once the city (specifically, Mike Benson) got the documents, Gelfand had copies of the IA files he had been seeking within a few days.

The charges having to do with the Kimberly Beu matter were not added until the second amended PNDA (J-4) was issued in June 2020. Gelfand testified that he remembered having to do some convincing to add to the charges and had to kind of "lobby" to get the untruthfulness about the Kim Beu transfer to the juvenile unit included. This "lobbying" effort was by phone conversation or conversations with Mike Benson.

The prosecutor's office issued a declination letter to Alicea dated February 4, 2020, as to the Kim Beu/DeMarchi investigation and advised the city to contact Chief Cuff if they would like a copy of the file. (P-3, R-115.) Gelfand testified that the City picked up the file within a few days of that letter being issued. (R-169 at 20.) The second amended PNDA adding the Kim Beu charges was dated June 15, 2020. (J-4.)

On September 18, 2020, the assistant prosecutor indicated to Gelfand's attorney that their office would not pursue anything against him having to do with the allegation of criminal wrongdoing. (R-89.)

Ronald Henry testified on behalf of the respondent. Detective Sgt. Ronald Henry has been in law enforcement for about twenty-eight years and has worked for the Cumberland County Prosecutor's Office since 2006. He is currently assigned to the legal bureau, where he manages detectives and assists prosecutors with evidence and witnesses. Henry reported to Chief Ron Cuff, who had oversight on the Professional Standards Unit. Cuff reported to the chief and to the prosecutor. At the time, the chief was Chief Richard Necelis.

Henry knew Beu and had worked with him from time to time in his capacity as a law enforcement officer with the VPD. Henry was also familiar with Adam Austino. Henry

did not remember ever discussing the DeMarchi matter or Josh Sheppard matter with Beu.

Henry was aware of Gelfand's investigation into Beu. Henry was directed to write a letter to Beu (R-116) dated February 4, 2020, but Henry had no involvement in the investigation of PSU 19-203 before that date. Therefore, he could not speak to why the investigation was deemed closed as unfounded. Henry did not remember reviewing the PSU investigation file before rendering the letter. Henry's letter to Ron DeMarchi (R-117) concerned the same investigation, PSU 19-203.

On or about December 18, 2019, a complaint was brought to Ron Cuff's attention regarding Gelfand's investigation. (R-205.) This matter was then brought to Henry. On December 18, 2019, Henry interviewed Beu. That interview was video-recorded (R-209) and transcribed. (R-210.) Prior to the interview, Henry had a logistical conversation with Beu informing him they were going into an interview.

During the interview, Henry asked Beu for any email documentation between Beu and the parties involved in his complaint. Beu responded that he might have some, but that the only thing he has was stuff from his attorney to Gelfand which he did not think he was permitted to release. Henry had never seen R-4D before, and he had no memory that it had ever been provided by Beu. Indeed, Henry did not remember Beu ever telling him Gelfand had the wiretap report.

Henry had conducted an investigation several years earlier concerning the allegation that Austino was improperly using the MVR system to listen in on patrol vehicles. Henry's office declined to prosecute in that matter. Through an email (R-204), the Cumberland County Prosecutor's Office authorized the release of the investigation file for this matter to Tonetta, since the department had been named as a defendant in a CEPA complaint. There was a practice at the CCPO that upon the conclusion of a PSU investigation, the investigative file would be returned to the local agency for administrative action when deemed necessary. Neither Beu nor Austino had been copied on the email to Tonetta authorizing access to the investigative file, and this email did not specifically authorize Todd Gelfand to have the file. Instead, the email said, "Mr. Tonetta is permitted to have copies of the investigative files." Henry was not aware of any CCPO policy that

would prohibit a city solicitor from sharing a report with a municipally retained employment investigator.

Henry sent a letter (R-84) on May 27, 2020, to Todd Gelfand related to this PSU 19-0318 matter indicating that the prosecutor's office had initiated a criminal investigation into whether Gelfand was properly in possession of the investigative file. Henry did not interview Gelfand in relation to this matter. The office declined criminal prosecution and the matter was closed.

Edwin Alicea testified on behalf of the respondent. Alicea serves as the Director for Public Safety for Vineland. Before this position, Alicea was a lieutenant from the Glassboro Police Department and served in the US Marine Corps. He is also an adjunct professor at Rowan University and has been an instructor at the Gloucester County Police Academy for thirty-five years. As the Director of Public Safety, he oversees the operations of the VPD, including its budget and disciplinary and hiring matters. This is a statutory authorization. This is a civilian position and not a sworn law enforcement position.

Special Counsel Todd Gelfand had been assigned to conduct an HR investigation on behalf of the city and Alicea was informed that some IA files would be necessary for Gelfand to conduct a thorough investigation. Alicea issued a series of directives to Beu to turn over files or give a reason why those files should not have been released under the IAPP.

Alicea issued a directive on February 24, 2020. (R-60.) Alicea received an email from Rudy Beu the next day (R-61), along with attachments including a letter dated February 25, 2020, from Beu to Gelfand. (R-63.) Alicea explained that he believes this response from Beu was not in compliance with the directive, because he had specifically requested that files should be turned over to the investigator and they were not, and he did not receive a good reason or good cause analysis. The directives Alicea had issued indicated that the IA files were sought for Mr. Gelfand's investigation and indicated why Mr. Gelfand sought them. Following receipt of the February 25, 2020, email and letter from Beu, insubordination charges were issued against Beu.

November 4, 2019, Directive (R-42)

Alicea first issued a directive on November 4, 2019, (R-42) at which point Mr. Gelfand had been seeking to get these files or a reason why not for at least several months. This was a concern because it delayed an investigation that the city was bound to proceed with. Alicea did not recall receiving a response from Beu with the files or a reason why not. Alicea agreed that this first directive did not include any specific lists of IA files and that there would be no files for Beu to turn over in response to this directive.

January 24, 2020, Directive (R-47)

Alicea next issued a directive on January 24, 2020, (R-47) requesting files or a reason why not to produce them. Todd Gelfand wrote this directive. Alicea agreed that the directive includes a request for all IA files where Beu had been the target of the IA investigation, throughout his entire career. Gelfand did not tell Alicea why he needed to review every IA file in which Beu had been the subject. There was no similar request to review the IA files for any other officer for every time they had been the target or subject of an investigation. Alicea denied that the portion of his directive ordering Beu to release his own IA files was unlawful.

Alicea received an email response to this directive from Beu at 9:09 a.m. on January 27, 2020. (R-48.) This was before the 10 a.m. deadline. In this email, Beu said he needed to consult with the prosecutor. This investigation had been going on for six months, and Alicea did not recall a time before this that Beu ever said to him he needed to consult with the county prosecutor. Alicea allowed him time to consult with the prosecutor.

During this time, Alicea was busy as director for the City of Vineland and was not involved in the day-to-day of Gelfand's HR investigation. After he received the email response from Beu (R-48), Alicea had the opportunity to consult with the city and learned that these requests had been ongoing and pending for several months.

January 27, 2020, Directive (R-49)

Alicea issued another directive on Jan. 27, 2020. (R-49.) In this directive, Alicea indicated that the need to consult with the prosecutor with this updated information would be unreasonable, since at this point, Beu should have already spoken to the prosecutor in response to the multiple requests pending throughout the past several months.

Alicea had been copied on the Sept. 3, 2019, letter to Richard Tonetta from Prosecutor Webb-McRae. (R-152.) Alicea testified that he understood the prosecutor had stated that requests for the chief's IA reports had to go to her office, but Alicea disagreed; the prosecutor had no authority over him. Alicea agreed that she has authority over the chief of police, including in the administration of the IA process, but believed Beu would have to comply with the city's request for an HR investigation.

Alicea agreed that the language in this January 27 directive telling Beu to turn over IA files in which he was the target contradicts his understanding of the prosecutor's statement in the September 3, 2019, letter. (R-152.) This directive provided that no additional time would be granted and that there would be insubordination charges if the files were not released. At this point, the directive instructed Beu to release the files, not to provide an explanation for not releasing them. Alicea denied that he issued this directive after he knew Beu had gone home for the day, stating that he does not keep tabs on Beu and did not know that he leaves for the day around 2:30 p.m.

The email response from January 27th at 8:05 pm (R-51) was the first time that Beu told Alicea that the reason for not producing documents was because of the alleged abuse of confidential IA files by Mr. Gelfand. Alicea agreed that Beu complied with the January 27, 2020, directive. Alicea agreed that in this response, Beu provided a rationale for why he had not found good cause, but Alicea stated that he disagrees with that rationale. Alicea agreed that Beu's letter was consistent with the letter of Sept. 3 from the prosecutor.

January 28, 2020, Directive (R-52)

In response to Beu's Jan. 27 email, Alicea sent an updated directive on January 28th (R-52) requesting a copy of the complaint that Austino had filed about Gelfand's investigation and thanking Beu for "finally explaining some basis reasoning why the issue of the Internal Affairs access was not resolved on a timely basis." Alicea was not sure that he ever received this complaint from Beu.

Regarding this updated directive, Alicea agreed there was nothing for Beu to immediately comply with. Alicea learned later that the complaint that Austino made to the prosecutor's office was a criminal complaint. He believes it would be appropriate to turn over such a criminal complaint having to do with one of the department's officers if it was requested.

January 29, 2020, Directive (R-53)

The next day, Alicea issued an updated directive (R-53) directing Beu to produce the complaint filed by Austino. In this directive, Alicea stated that the Monday evening communication from Beu (R-51) was the first anyone in the city administration had heard of this formal complaint. Alicea also raised in this directive that he was concerned that Beu was continuing to preside over the decision-making of whether there was good cause to release the files, because Beu should have passed this authority on to the deputy chief to take care of the files, since some of them may have been prejudicial to Beu.

Alicea agreed that this directive from January 29, 2020, (R-53) conflicts with his understanding of the prosecutor's letter. (R-152.) He agreed that his directives say he was disqualifying Beu and Deputy Chief Casiano would make the decision now. This directive said that Casiano could make the decision because although he was a witness in one or more of those investigations, he was not a direct target of any allegations of harassment or retaliation. Alicea agreed that Casiano was a target in the Basir Bey matter but stated he could not recall whether Beu was charged with retaliating and harassing Casiano in a separate disciplinary matter. Alicea testified he never had any information before him that Chief Casiano was a target in terms of harassing other employees. There

were never any matters before him, and he never received any information indicating that Casiano was abusing the IA process as it pertained to these particular PBA individuals. To the best of Alicea's knowledge, Casiano was never even assigned to IA. Alicea understood there is a distinction between the allegation that Pedro Casiano was a target of alleged wrongdoing in the strip search case (Basir Bey) and an allegation that an executive official had abused the IA process. Those are two separate types of matters.

Before this directive, there had been a request, among others, that Beu produce the IA files in which he was a target. This directive did not include that request. To the best of Alicea's knowledge, Beu did not respond to this directive by producing the files or giving a reason why he was not going to do so.

Two days after issuing this directive, Alicea received an email from County Prosecutor Webb-McRae. (R-58.) This was the first time he learned that the prosecutor was looking into the issue. Alicea agreed that the prosecutor noted that Beu had consulted with her and asked her to intervene, and that she had consulted with the attorney general. After this, Alicea had agreed to give Beu more time to respond.

Alicea agreed that R-58(a) is an email from Beu to him, including a forward of the email in R-58, in which Beu asked for instructions as to whether or not he should release the records. Alicea did not respond to this email from Beu.

Exhibit P-3 is a February 4, 2020, letter to Alicea from Prosecutor Webb-McRae, reporting the results of the prosecutor's investigation into Kimberly Beu and Ronald DeMarchi matters. Every result was either "unfounded" or "exonerated." The letter informed Alicea that his office could obtain a copy of the prosecutor's file, and the office did so in around February 2020.

February 19, 2020, Directive (R-56 and R-57)

In the interim weeks between the Feb. 19 directive and the previous directive (R-53), Alicea did not receive any updates from Beu with the files or a reason why he did not produce them. This Feb. 19 directive indicated that for any files not produced, Beu must

produce an itemized response of his reason for not producing, specifying any objection and fairly and reasonably stating the basis for objection in writing. This directive also stated that it does not contemplate or require any public release of any IA files. By this, Alicea meant that files will be kept confidential with the investigator, Gelfand, and would not be released to the public for any reason. Alicea disagreed that Gelfand was asking for unfettered access to the files, since Gelfand's request was specifically directed at the investigation being conducted, not access to the entire IA files. The directive states that the files are being requested for internal review by Mr. Gelfand only, as necessary for the city's investigation, an investigation which is required by city policy.

Looking at the directive (R-56 and R-57), Alicea stated he did not recall how the list of requested materials attached to this directive was different than prior lists of IA files. Alicea did look at the list before signing the directive but does not remember if he knew at the time of issuing it that the prior directive disqualified Chief Beu and said Pedro Casiano was in charge of making the decision as to the files.

Alicea agreed that he received a letter from the prosecutor (R-59) and read it on or about February 23, 2020, the date that it was sent. Alicea acknowledged this letter provided guidance to Beu as to the request for IA records, instructing him to grant such action "sparingly" and telling him that the chief has sole and complete discretion to make the good cause decision. The letter also acknowledged that a municipality is free to conduct internal investigations to defend itself in cases of hostile work environment, harassment, discrimination, whistleblowers, and other purely civil matters. Alicea understands that this letter does not ever indicate that his directives were unlawful.

February 24, 2020, Directive (R-60)

Alicea issued his final directive to Beu on February 24, 2020. (R-60.) Alicea testified that this directive indicated that the county prosecutor was not going to overtake the IA unit. The bottom of this directive stated, "I reassert my directive to turn over Internal Affairs files and reference the above past directives for your review," which Alicea testified meant he was incorporating his prior directives. Alicea never rescinded his prior directives in subsequent directives. When he issued this directive, he was saying specifically that

Beu must produce the files or reasoning as to why they were not submitted. If Beu believed there was some reason not to produce files, he was not prohibited by this directive from indicating so. However, Alicea also acknowledged that this directive instructed that failure to deliver the files would be considered intentional defiance; there was no stated option to provide reasons for not turning them over instead. The deadline to turn over the files to the solicitor's office was by 9 a.m. on the next day, February 25, 2020.

In response to this directive, Alicea received an email from Beu (R-61) and a letter from Beu to Gelfand. (R-63.) In those responses, Beu indicated at least six or seven IA files which were pending good cause analysis or pending submitted reasoning. Beu's response was timely, one minute before the deadline. The first line of Beu's response states the document is Beu's response to the request for files "dated February 19, 2020." The list of files in that date's directive (R-53) did not reference any individual files for which Beu was a target. Alicea understood Beu's references in R-61 to sections B, C, D, and E as references to the list on the second page of the directive at R-56.

Alicea agreed that Beu made some files available to Gelfand. For other items, Beu stated he did not have enough information to determine whether good cause exists and that requested additional information.

Alicea testified that this response was not a good enough response after the period of time that had passed. Immediately after this response, Beu was suspended as chief of police.

PNDA

After reviewing all of the relevant information, Alicea ultimately signed the PNDA charging Beu in this case. He agreed it would have been appropriate for Beu to seek legal advice from the city solicitor and assistant city solicitor for help to comply with the directives, and that Beu might have done so. He did not know that Tonetta and Benson never responded to Beu and instead gave the email to Gelfand.

Alicea reaffirmed that he believes Beu was insubordinate for not turning over the IA files where he was the subject of an IA investigation, even upon review of R-55, the letter from assistant city solicitor Mike Benson to Beu summarizing a conversation between Benson and Shapiro. This email stated they would advise special counsel that Beu's IA files should not be the subject of further request for review. Alicea believes Beu should have still turned the files over to him in response to the directive and that seeing this letter to Beu does not change his mind.

Alicea agreed that there can only be insubordination for disobeying a lawful order, and that someone is not insubordinate if they disobey an unlawful order. When Alicea read R-152, the letter from the prosecutor, he understood that the prosecutor was communicating her belief that the orders to release IA files were inappropriate and should not be followed.

Alicea recognized R-165 as the rules and regulations that govern police officers in the City of Vineland. He also recognized J-4 as the second amended PNDA with his signature on it. One of the charges in the PNDA is for violating section 3:1.3 of the rules and regulations. Looking at this chapter in R-165, chapter 3, under "general conduct," Alicea agreed that Beu was charged with violating performance of duty in this PNDA for disregarding Alicea's written directives. On the first page of R-165, Alicea is noted as the appropriate authority in the issuance of these rules and regulations. Alicea agreed that the chief of police is the highest-ranking officer in the department. Alicea agreed that he is not a police officer but disagreed that he is not a superior officer to Beu, stating that he is the appropriate authority, so he supersedes Beu's authority. He conceded, however, that he is not a superior officer as that term is defined by the rules and regulations on page 5 of R-165.

Looking at exhibit J-2, Alicea agrees the VPD is a civil service entity, and thus, the charges he issued as the appropriate authority include not just charges issued under VPD's general orders, but also under civil service regulations.

Alicea understood that he was the appropriate authority by statute. He also understood that the statute requires that the chief of police report to the appropriate

authority. In each of his directives, Alicea indicated that they were being issued in his capacity as the appropriate authority. Alicea was not aware of anything in the rules and regulations that would give a chief of police the authority to ignore a directive issued by the appropriate authority.

Sheppard Matter

Alicea was familiar with the Josh Sheppard matter from around 2019. Alicea initially did not recall who brought the Sheppard matter to his attention or how they did so. He felt it was important for the solicitor's office to know about it. When looking at R-147 in the Sheppard binder, Alicea agreed that he got an email from the officer that brought the issue to his attention. The officer had just gotten back from vacation, and Alicea promised to forward the documents as soon as he received them from that officer. Alicea was not aware that Triantos had testified in this proceeding that he had no idea how Alicea found out about the Sheppard matter.

Alicea never ordered Lt. Steven Triantos to give him an IA file. Alicea was only made aware later that the prosecutor suggested he had ordered that. Alicea was not originally copied on the first email in the email chain (R-147) from the prosecutor to Tonetta, Cuff and Necelis advising that Carl Cavagnaro told her that Tonetta advised that an allegation had been made against Beu regarding his involvement in a matter where he had a conflict of interest and requesting the name of the complainant and transmittal of materials in relation to the allegation. (R-145.) When the prosecutor's office followed up with their request for information, Tonetta advised that they would receive the paperwork from Alicea. (R-146.) Alicea did ask Triantos to provide a summary of the Sheppard IA investigation. (R-148.) When Alicea provided this report, Chief Cuff acknowledged receipt and thanked Alicea on an email copied to Prosecutor Webb-McRae, Chief Necelis, and Tonetta. None of those people, nor anyone else, ever indicated to Alicea after he had sent this report that he had asked for a written report that was wrong, improper, or in violation of any guidelines.

The prosecutor's investigation into the Sheppard matter was completed by September 2019, which was when Alicea's office received the letter in R-152. The letter

stated the prosecutor's office would make their file available to Alicea's office, meaning the city had all of the prosecutor's information related to the Sheppard matter around September 2019. However, the charges were not filed until February 6, 2020, well more than forty-five days after September 2019. The only rules and regulations section that Alicea charged Beu with related to Sheppard was 3:1.1, performance of duty.

R-152, a letter from prosecutor Webb-McRae to Rick Tonetta, dated September 3, 2019, does not indicate how it was sent (email or physically). When Alicea received the letter, he was not given the IA file for the Sheppard matter and does not know if the City of Vineland received the prosecutor's IA file for this matter.

Similarly, Alicea did not receive the IA file for the matter referenced in P-3, the February 4, 2020, letter from the prosecutor regarding PSU 19-0203. He does not recall whether the city received that file.

Alicea was not aware that the county prosecutor's office had investigated him in relation to the Sheppard matter. Alicea had not seen the IA report signed by Chief Ronald Cuff (R-207) recommending that he be provided with an outcome letter. Alicea denied that he had provided false information. Alicea testified the proper thing would have been to interview him before this recommendation about him was made.

U Visa Investigation

On rebuttal, Alicea denied that he had ever testified before a federal grand jury in connection with a U visa matter. Alicea was never informed by anyone at the Department of Homeland Security or FBI that he was a "target" of an investigation related to U visas. He was also never informed that he was the target of an investigation into whether he gave false testimony to a grand jury. Alicea never received a target letter notifying him he would be investigated for alleged federal violations. At the departmental hearing, Alicea had agreed that he was the target of a federal criminal investigation, and that Beu was aware of this investigation. (R-174, pg. 174.) On recross as a rebuttal witness, Alicea agreed that he was a target of a federal criminal investigation in January and February 2020.

As the police director for Vineland, Alicea signed applications for U visas. U visas are issued to victims of crime to encourage cooperation with law enforcement. Usually, the application was received by the police department from an attorney for the applicant. Alicea explained that he was not issuing or “approving” U visas, but rather, his role was to fill out a form confirming that the person was a victim of the listed crimes. Then, he sends the application to DHS, who has the final say. Alicea followed the DHS guide to U visas as his manual. (R-225.) Alicea also reviewed the New Jersey Attorney General’s directive on this issue. (R-226.)

Alicea became aware that this was being looked at by the Department of Homeland Security by a phone call around four or five years ago on or around October 31 telling him to meet at Vineland police headquarters. About five or six federal agents there asked him questions, including about his authority to sign U visas for the federal government. Alicea did not have an attorney at this meeting. This was before the February 2019 “Daily Journal” article came out.

About four months later, Alicea had an “abrupt awakening” in that at around 8 o’clock in the morning, about three federal agents and “a boatload of S.W.A.T. team members” arrived at Alicea’s house and informed him they had a search warrant for all of the electronics. Alicea called the mayor, and the city sent an attorney. The agents went through all of his weapons and electronics. Alicea estimated that all of his items were returned to him after about ninety days. (R-227.) Beu was copied on emails indicating that Alicea’s items were cleared for return.

When Alicea went to pick up his items at the Mount Laurel office, he was put in an interview room and asked more questions by two federal investigators, including Tranchitella, about the number of U visas he had signed. Alicea again did not have an attorney present. When he was told that they had found 20 U visas he had signed, more than around five to seven that Alicea had told them he had signed during the October meeting, Alicea explained to them he did not have a good enough memory to recall exactly how many he had signed. After that meeting, Alicea did not have any further discussions with Agent Tranchitella or any other person from the FBI or DHS.

The last time Alicea had discussions with any federal officials related to this U visa matter was in 2019. By the time of Tonetta's email on September 2, 2020, (R-228) it was accurate that all personal and public property had been returned to Alicea and the city.

Beu had never communicated to Alicea that Alicea should not be signing U visa applications, or that Alicea was not the appropriate official to sign them. Beu never told Alicea he had talked to Agent Tranchitella about anything. Beu never indicated to Alicea that he could not comply with the directives because of some confidential matter.

Richard Tonetta testified on behalf of the respondent. Tonetta has been the city solicitor for the city of Vineland since 1996, except for four years. As the city solicitor, Tonetta writes legislation and represents the municipality in litigation and disciplinary matters. The city, a civil service municipality, has close to 700 employees.

Around May or June 2017, Tonetta had a conversation with Chief Beu in Tonetta's office. Tonetta and Beu had been friends for a long time. On this date, Tonetta knew that a sergeant's promotion was coming up and asked Beu if he had any idea who he might be promoting. Beu told Tonetta there were a few people on the list. Tonetta asked, "How about DeMarchi?" knowing DeMarchi was on that list. Beu said something like "Well, I told him if you give me your wife, I'll promote you," and the two laughed. Tonetta figured the comment was an embellishment or joke and ignored it.

That summer, maybe August or so, Tonetta overheard a few police officers and the mayor speaking in a conference room next to his office. Beu was not present. One of the officers said Beu had told DeMarchi that if he gave him his wife, Beu would promote him. Tonetta turned around and said something like "Did he really say that?" The speaker affirmed that Beu said that. After Tonetta heard this, he realized Beu had not been joking when he first said this to him, but Tonetta did not think much of the comment other than that it was not the proper thing to say.

After this, on September 9, 2017, Tonetta got an email from DeMarchi asking Tonetta to talk privately about an incident. (R-94.) On September 14, 2017, DeMarchi

emailed Tonetta documenting a discussion the two had that day. (R-95.) Tonetta had also taken notes during this conversation with DeMarchi. (R-96.)

About a week or so after DeMarchi came to Tonetta, Tonetta had a conversation with Beu about the alleged incident. Beu denied making the comment about promoting DeMarchi if DeMarchi gave Beu his wife. Beu also denied that he had told Tonetta he made such a comment.

The city continued investigating DeMarchi's complaint, including by interviewing Thomas Riordan. Riordan denied that Beu ever made the comment about DeMarchi's wife. DeMarchi also alleged that during the same event, his wife had been asked something like "Why should we promote your husband?" and then Riordan had asked her "What are his best attributes?" and looked her up and down, as if she was DeMarchi's best attribute. When Tonetta spoke with Riordan, Riordan denied this.

Ed Duffy, associate city solicitor, and later, Bob Pinizzotto had handled the city's investigation until the city hired Todd Gelfand. To Tonetta's knowledge, the only interviews completed for this investigation by Duffy or Pinizzotto before they passed away and retired, respectively, was Duffy's interview of Austino. The city retained Gelfand after discussing the need for outside counsel with Beu, Austino and the PBA. Tonetta explained that the city chose Gelfand because he did "JIF work," and everybody—including Beu, Austino, and the PBA—liked him because he defended police officers. Although Tonetta did not know Gelfand personally, he had received numerous recommendations and Beu, Austino, and the PBA were all highly confident in his abilities.

Around November 2018, the city received a draft complaint. Gelfand began his investigation about a month or two after the city had received the draft complaint. Shortly after the city received the draft complaint, the complaint was delivered to the CCPO. Tonetta believed Austino sent it to the CCPO in November or December. In the letter of demand, the PBA communicated they wanted Beu's immediate removal and 1.5 million dollars. (P-20.) Tonetta's impression was that the PBA simply wanted Beu out and they thought that the demand letter would frighten the city into doing that. After receiving this letter, Tonetta met with Benson and the law firm representing the PBA and told them in

no uncertain terms the city would not acquiesce to their demands. The city was still obligated to investigate the matter.

Tonetta initially believed Gelfand was conducting the investigation on behalf of the JIF. When Tonetta received the draft complaint, he had turned it over to the JIF, and he believed Dave DeWeese, one of the JIF administrators, had recommended Gelfand's firm to do the investigation.

Tonetta had given Gelfand all the information in his files to perform the investigation. This included the investigation report that had been completed by the prosecutor's office as to the MVR wiretap matter. This report was released to Tonetta by the prosecutor's office in 2017 to review for the purposes of the HR matter arising from the report. (R-204.) Tonetta maintained the report for that purpose.

In September 2019, an article was published about the alleged DeMarchi matter and the draft complaint. Tonetta had no role in contacting the press about these allegations and did not know how it got to the press. When the draft complaint came in, Tonetta had given it out to Beu, Riordan, Austino, and possibly Finley because they were named parties. Austino had at some point mentioned to Tonetta that he wanted to release the complaint to the press because he would like it to be tried in the court of public opinion.

By September 2019, the city had not heard back from the CCPO about its investigation of the complaint, so Tonetta reached out to Prosecutor Webb-McRae. (R-18.) Tonetta understood that Chief Cuff of the prosecutor's office conducted several interviews. Tonetta was interviewed and told Cuff what Beu had discussed with him. The prosecutor's office sent its final disposition for its investigation on February 4, 2020. (R-115.) The city could not obtain the prosecutor's investigation file right away. Although the prosecutor's office may have their own findings after an investigation, usually into criminal allegations, certain findings have nothing to do directly with a municipality's responsibility to respond to HR complaints. Thus, even having received the prosecutor's letter on February 4, 2020, the city had an obligation to continue with its own HR review of the allegations related to the Phillies game. Ultimately, the city did issue certain charges

based on its own internal investigation related to Chief Beu's alleged comments at the Phillies game.

During his cross-examination, Tonetta was asked whether he believed Beu had made the alleged comment about DeMarchi's daughter. Tonetta responded that he did not believe that it was true but did not know whether he said it or not. Tonetta meant that he did not believe that Beu was a pedophile and he did not believe Beu meant he was going to actually have either DeMarchi's wife or daughter.

In addition to the DeMarchi matter, Tonetta was also familiar with the allegation the Beu had a conflict of interest in ruling on a disciplinary matter involving Officer Sheppard, the father of his grandchild. Tonetta had gotten a complaint from the PBA about Sheppard having been charged with IA charges for insubordination and a recommendation for a one- or two-day suspension. The PBA told Tonetta that Beu should have passed the discipline to someone else, because Sheppard had a relationship with Beu's daughter, with whom Shepard lived and had a child. The PBA told Tonetta that nonetheless, Beu got involved and reduced the discipline from the one- or two-day suspension to a verbal or written warning. Tonetta did not know who had prepared this complaint and did not review the IA reports involved himself. Tonetta did not question how the PBA officer who sent this complaint knew about the contents of a confidential IA report; it was the prosecutor's job to review that.

Along with Carl Cavagnaro, Tonetta contacted the prosecutor's office about the Sheppard matter, because under the Attorney General Guidelines, anything dealing with the chief related to IA has to first be considered by the prosecutor's office. The prosecutor told Tonetta that the CCPO would handle this and to refer everything to them. (R-145.) Tonetta and Alicea provided the prosecutor's office with the information they had related to this matter. (R-146.) Tonetta believed the final disposition of that matter from the prosecutor's office was a finding of no wrongdoing or exoneration of the Chief. (R-152.)

Tonetta asked the prosecutor's office to reconsider its position in the Sheppard matter. (R-153.) In Tonetta's opinion, it was clearly a conflict of interest for the Chief to be involved in a disciplinary matter related to a police officer who was residing with his

daughter and then changing the discipline that had been recommended by IA. The CCPO did not focus on the conflict of interest, but on the discipline itself. Tonetta was more concerned about the conflict of interest, which was the involvement of the chief of police in a matter that had a direct or indirect impact on his family. Tonetta was concerned that this decision placed the chief of any municipality above any kind of conflict of interest.

The discussion between McRae and Tonetta continued. (R-154; R-155; R-156.) Tonetta did not follow Webb-McRae's logic and was concerned about her findings, believing any reasonable person would see what had happened as a conflict of interest. Additionally, Tonetta had no indication that anyone at the CCPO had looked at the civil service regulations or city policies (R-166) governing conflicts of interest. When asked whether Tonetta thought Austino's father, Robert Austino, had exercised some influence over Webb-McRae, Tonetta answered that they did work together.

On cross-examination, looking at the definition of "member of immediate family" as defined in the city policy, Tonetta agreed that Shepard was not an "immediate family member" pursuant to the city's ethics policy at the time. Similarly, Tonetta testified he did not believe Beu violated the city's fraternization and relationships policy. (R-164.) In his correspondence with Webb-McRae (R-153), Tonetta had identified the New Jersey Uniform Ethics Code, but he also agreed that Vineland was not a state agency and Beu is not a state officer under that code. Additionally, Tonetta agreed Sheppard was not a "relative" under this policy. Tonetta repeated that he had read case law supporting that Beu had a conflict of interest.

Tonetta wrote to the AG's office asking that they review this matter. (R-157.) Tonetta believed the AG's office's response was that it was discretionary with the prosecutor's office, and unless there was an abuse of discretion, there was no reason for the AG's office to get involved.

In addition to the charges related to the DeMarchi and Sheppard matters, Tonetta was also aware that one of the allegations looked at by the prosecutor's office regarding this matter was that Beu was untruthful in an interview with the prosecutor's office relating

to Beu's assignment of his daughter to the juvenile unit. However, Tonetta did not do anything involving that charge.

Tonetta was also aware of the charges against Beu for insubordination related to the several requests for IA files. Tonetta had been regularly updated on Gelfand and Alicea's progress on obtaining the IA files and completing the investigation. In fact, Tonetta had lodged a complaint with the CCPO because the city needed those files for the investigation and Beu would not release them because the HR investigation would not get responses about the files from Beu's attorney for weeks and months at a time, Tonetta explained the investigation was stymied. According to Tonetta, the requested IA files were absolutely necessary to protect the city from any kind of litigation they were actively facing or could potentially face. While IA files are typically not releasable to the public, they are typically provided to municipal employees in order for the municipality to defend themselves in potential litigation that may have involved that IA folder.

On May 15, 2020, the city submitted a memorandum in support of its application to obtain the IA files, which Tonetta was copied on. (R-80; R-81 and R-82.)

As part of his job as city solicitor, Tonetta provided legal advice to city employees for issues affecting the city. Beu had emailed Tonetta and Assistant City Solicitor Mike Benson asking for advice regarding Alicea's Jan. 22, 2020, directive. (R-54.) Tonetta did not recall responding to this email but probably turned it over to Gelfand. He believed the decision to release the IA files was Beu's alone to make, unless the prosecutor weighed in on it or there was a court order making the decision for everyone. This was seven months or longer into the city's process of trying to get the files, but this was the first time that Beu had come to Tonetta. Additionally, Tonetta knew at this point that Beu was represented by Jim Bell.

Tonetta never indicated or pressured Gelfand in any way to reach a certain conclusion or to find in favor of one person or another.

Tonetta agreed that he had testified in the departmental hearing that DeMarchi never told him that Beu called T. Hall "T-Bag." Tonetta had heard many people refer to T.

Hall as “T-Bag,” including Beu. Tonetta never stated to DeMarchi that Beu was a ‘swinger’, but he had heard that about other police officers in the department.

Stephanie Adams testified on behalf of the petitioner. Adams worked for the City of Vineland for approximately eighteen years, including as Beu’s administrative assistant since 2017. Adams continued in this position under a new chief, Acting Chief Pedro Casiano, but left her employment with the city in August 2024. Her responsibilities as Beu’s secretary included taking care of Beu’s correspondence, calls, and schedule, along with regular department duties for the rest of the department like payroll, budgeting, ordering supplies, and other tasks.

Adams knew Ron DeMarchi and knew of the sergeant’s list that was getting ready to expire around the latter half of 2017. DeMarchi was an officer on that list, and another officer’s name, Terry Hall, was in front of DeMarchi’s to be promoted to sergeant. Around this time, the latter half of 2017, DeMarchi would hang around the general area of the administration offices wanting to speak with Beu and talking to some of the other captains. Adams’s desk was probably two to three steps right outside of Beu’s office door, such that Adams could hear people in Beu’s office speaking in normal voices if his door was open.

Adams recalled a meeting in Beu’s office between Ron DeMarchi, Matt Finley, and Beu, about which she was later questioned by the CCPO. During that meeting, Beu’s door was open. Adams saw DeMarchi walk out of the office. Everybody was smiling and laughing when they walked out of the office. She had heard the conversation, which was about when the promotion would possibly happen and that DeMarchi could really use the promotion because he was trying to get one of his children at the time into a private school in the area. She did not specifically recall what Finley or Beu said during this meeting. Terry Hall was only mentioned to the extent that he was the first name on the list. This meeting was probably ten to fifteen minutes. Adams remained seated for the entire meeting, working on reports, which she agreed were pretty important.

Beu had told Adams some time before this meeting to slow it down with DeMarchi going into the office, because DeMarchi was coming around the office a lot. On the date of this meeting, Adams did not say anything to DeMarchi before he walked into Beu’s

office. This was because she believed it was already discussed that he would be coming in.

Adams was aware of the allegation that Beu said something to DeMarchi about having his wife or daughter in exchange for a promotion. She did not witness that happen. Adams had heard Beu tell jokes from time to time but never about sleeping with someone's wife or daughter. If she did hear this joke, it would have stuck out in her mind because it would be "wildly inappropriate." She heard other people refer to Terry Hall as "T-Bag" but never heard Beu do so.

Through the beginning of 2020, Adams scheduled meetings between Beu and federal authorities. She believed they received calls from the federal agents to schedule these meetings. She did not specifically know that these meetings had anything to do with Director Alicea. These meetings occasionally involved federal agents. She believes one was Tranchitella. Adams was not present at these meetings and Beu never told her what these meetings were about.

Adams liked working for Beu and got along with him. She would not want to see him disciplined unless there was something to be disciplined for that he had actually done.

Todd Gelfand never interviewed her about the DeMarchi incident or any other subject.

Adams did not specifically remember how her interview with the prosecutor's office on December 18, 2019, came about. The interview was conducted at the police department, in the administration conference room. She and Ron Cuff were the only people in the room when it was conducted. She probably told Beu that she was going to be interviewed but did not remember him saying anything specifically in response. She was aware of the DeMarchi allegations before she was interviewed. She was not sure about whether she had seen an article about the allegations before her interview, but she may have. She probably did discuss the article and the allegations in the article with Beu but could not remember the specific discussion with him.

Thomas Riordan testified on behalf of the petitioner. Riordan has served in the VPD as a patrolman, in the detective bureau, as sergeant and then road sergeant, as crime scene unit sergeant, as sergeant in the IA unit, and then as lieutenant. He was terminated, reinstated by the Civil Service Commission, and then suspended, and has not been back to work.

Riordan attended the Phillies game in April 2017 with his wife, his brother (William “Bill” Riordan) and Chief Beu. They first went to a bar, McFadden’s. Although it was crowded, Beu and Bill had seats at the bar. When Riordan approached the chief while returning from the bathroom, Ron DeMarchi was talking to the chief. Riordan slid in between Beu and Bill and listened to DeMarchi “badger the chief about getting promoted.” Riordan’s shoulder was basically touching Beu’s back, and Bill was at most a couple of feet away from Beu. DeMarchi was asking the chief if they were going to make any positions and if he would skip people, meaning Terry (“T” or “T-Bag”) Hall. Eventually, Riordan told DeMarchi to stop badgering Beu, because Beu did not like to talk about work outside of work.

Riordan did not consider himself intoxicated as at this time, he had had one, maybe two drinks. At the departmental hearing, Riordan had testified that he had had two, maybe three drinks by the time of this interaction. By the end of the day, Riordan was intoxicated.

Riordan did not ever hear Beu say to DeMarchi anything about sleeping with DeMarchi’s wife, nor about skipping Terry Hall. It was noisy and crowded in McFadden’s, but not so loud that Riordan could not hear Beu, because Riordan was so close to him.

Riordan did not have any interaction with Suzette DeMarchi that day. He did not have any conversation asking Suzette DeMarchi what her husband’s best assets were. He also did not see any conversation between Beu and Suzette DeMarchi at all.

Ron Cuff from the prosecutor’s office interviewed Riordan and asked for his brother’s contact information, which Riordan provided verbally.

Todd Gelfand never interviewed Riordan about the alleged DeMarchi incident at the Phillies game.

Shane Harris testified on behalf of the petitioner. Harris served on the Vineland Police Department for thirty years, as a patrolman, detective, polygraph examiner, crime prevention officer, sergeant in charge of the juvenile unit, and patrol sergeant when he retired.

As sergeant in the juvenile unit for five to six years, Harris was the day-to-day supervisor of the unit. The juvenile unit is the liaison between the school board and the police department. The unit was also involved with the Police Athletic League (PAL) summer camp.

Harris knew Kimberly Beu. She had been a student at PAL and then a junior counselor there before working for him at the department in the juvenile unit. Harris served on the PAL board for ten years. Kimberly was assigned to the juvenile unit because she put in for it and Harris selected her. Generally, when it came to selecting officers for the juvenile unit, the captain would first put out an email describing the opening. An officer would submit their name in response. Harris would talk with his captain, who in this instance was Captain Bowers, who would tell him who had put in for the unit, and Harris would select the officer from that group. Then, later in the day, an email would come out that said that officer was assigned to the juvenile unit.

Harris selected Kimberly for a few reasons. The previous female officer had left the department and Harris wanted to replace her with another female to represent the population and have a female officer deal with female students. Captain Bowers said no to his first pick, Officer McCormick, because McCormick was about to be promoted to sergeant and then would have to leave the unit when promoted and go back on patrol. Harris had known Beu from her previous work with the PAL. Chief Beu did not in any way attempt to influence Harris to select Kim Beu. It is possible that Harris told Kimberly he would love to have her in his unit, even before her application came in.

There was some unwritten rule that officers had to have three years before they could come off the road, but Harris had never seen that rule in writing.

Harris is also familiar with Felipe Laboy, who was selected for the juvenile unit at the same time as Kimberly Beu. No one attempted to influence Harris to delay Laboy's assignment so Kimberly Beu could get his spot on the juvenile unit. A couple years prior, Harris had selected another officer and found out that Laboy was a little upset that Harris had not selected him, so Harris told Laboy to keep his nose clean and if there was another opening, Harris would consider him.

Harris also worked with Rudy Beu. Beu had been Harris's captain in the detective bureau and the two had worked together as patrolmen for a short service before Beu went up in the ranks.

Harris testified that he has been a loyal PBA member for thirty years and had nothing against the PBA.

William Riordan testified on behalf of the petitioner. He works as a senior manager for a print and copier company called Ricoh. Tom Riordan is his brother. He attended the Phillies opening game in April 2017 with his brother, Tom, brother-in-law Keith and Beu. Tom's wife drove them. He believed that was the first time he met Beu, or it may have been the second time. When they arrived at 10:00 a.m. they went to McFadden's and checked in. They had a package deal and there were things to eat and drink. The game did not start until around 2:00 or 2:30 p.m. He had two to three drinks at McFadden's over a couple of hours. When they were inside McFadden's they encountered someone, he later learned to be Ron DeMarchi. He did not know him. Beu was with him at the time. He could hear what was being said as he was right next to Beu who was standing right next to Ron DeMarchi. It was crowded, but not so crowded you could not hear what was being said right next to you. Ron DeMarchi was badgering the chief about getting a promotion. He thought this was unusual and told his brother when he got back from the bathroom. In response, Beu was telling DeMarchi to let the process take place. He did not hear Beu say anything about wanting to sleep with DeMarchi's wife or take his wife home. He also did not hear Beu shouting about promotions. That is

something he would remember if he had said that and he would have heard it since he was standing close to Beu and DeMarchi at the time. Riordan was interviewed by Ron Cuff from the prosecutor's office, who called him on the telephone. He did not speak to Todd Gelfand.

The conversation he witnessed between Beu and DeMarchi took place at approximately noon, two hours after they arrived at McFadden's. Riordan believes Suzette DeMarchi was there with Ron. He did not speak to her; he was just standing there. He believes he was introduced to them by Beu and they said hello and they exchanged hellos. Riordan does not remember if his brother was there for the conversation between Beu and DeMarchi because at some point he left to go to the bathroom. When Tom came back, Riordan said to his brother that DeMarchi was going on and on badgering Beu about his promotion and at that point his brother Tom said let's go and he, Tom and Beu walked away. They went back to get food, ate and then went to the Phillies game. He could not recall if he was standing next to Beu the entire time from the time they arrived at McFadden's until they walked away or whether his brother Tom was in between them at some point in time, but they were all together.

Rudolph Beu IV testified on his own behalf. He was hired by the City of Vineland on April 25, 1982, as a patrolman and moved up the civil service list. He did about one year on foot patrol and then was placed in a motor unit on patrol for approximately three years. He did ten years in the K-9 unit, which he loved, until April 2005 when he was promoted to sergeant and was transferred to the patrol division, then the detective bureau, then the crime scene unit. He was promoted to lieutenant in early 2002 but stayed in the crime scene unit for another three years until he was promoted to captain in 2005 and was then transferred to the criminal division. They handled all of the major crimes in the City of Vineland and attended a lot of training. While he was a captain, he was selected to attend the FBI National Academy in 2010 which he attended in Quantico from April to the end of July and graduated from the program. He was promoted to Chief January 3, 2017. He had planned on retiring but held off putting in his papers as the chief's opening came up and he was selected. He was chief until he was suspended February 26, 2020. Fourteen months later he was demoted and came back to the station to work as deputy chief while he appealed the demotion, which is the subject of this

proceeding. However, when he came back as deputy chief, he was only there for approximately five months and was suspended again and terminated. The termination was overturned in another administrative law proceeding. When Beu was promoted from captain to chief, there was no rank of deputy chief at the agency at that time. During his tenure with the VPD he was never assigned to the IA unit.

The allegations against Beu were contained in a draft, unfiled complaint. (R-1.) He first learned about this document from the City Solicitor, Rick Tonetta in November 2018. Tonetta had called him to come over to his office and showed Beu the complaint and gave him a copy. Tonetta was upset about the document and so was Beu as they discussed it briefly. Beu asked Tonetta how he got a copy of it if it was not filed, which Beu thought was odd, but Tonetta did not say. Beu went back to the police department and called Adam Austino and Tom Riordan who were both named in the document. He gave them both copies of the document and they made the decision that they were going to self-report themselves to the CCPO because some of the allegations were criminal in nature. The draft complaint was emailed and Beu believes a hard copy was delivered to the CCPO by Austino and they asked to be investigated. Tonetta called Beu on the phone later that day or the next and Beu told him that they sent it to the prosecutor's office and Tonetta was livid. Beu made handwritten notes of his conversation with Tonetta. Tonetta made statements to Beu that he knew what the purpose of the complaint was, and that was to get Beu to retire rather than go through this aggravation and why would he give a copy to that little 'pr—k' Austino and that now it is going to get out and who are the people going to believe, the guys in the white shirts or the rank and file. Beu wrote down these statements in his office while Tonetta was talking to him on the speakerphone. Vineland police lieutenants and above, captains, chief wear white shirts and rank and file officers wear blue.

Tonetta told Beu that he did not believe the allegations in the draft complaint and emphatically did not believe the allegation wherein it was alleged that Beu wanted to have sex with a minor in exchange for a promotion.

Beu believed the city administration wanted him to leave the department because the union wanted Beu out. Tonetta and Bob Dickenson, the business administrator, told

Beu that. Specifically, union members Greg Pacitto and Craig Scarpa were very good friends with the mayor, Anthony Fanucci, and they did not want Beu there. Beu had heard rumors and later learned that there had been a demand letter sent demanding his removal as well as \$1.5 million. (P-20.) Tonetta responded to the demand letter. (P-20.)

One of the allegations in the draft unfiled complaint was that Beu expressed a desire to have sex with an underage girl which was not true, and destroyed his family, career and personal life. He was getting hate mail at work, death threats on his department phone line. His wife would not go outside the house and his kids were embarrassed to go outside the house. An article appeared in New Jersey.com (P-14) and then got picked up nationwide and appeared in numerous newspaper articles.

Beu did not have any hostility towards the PBA and was a member almost his entire career. He left the PBA either right before he became chief or shortly thereafter. The PBA supported him for chief. At his promotion party at the North Italy Club in Vineland, hundreds of people were there and when the event was coming to an end, the PBA paid to extend the event and picked up the tab for another hour of bar and food. When he first became chief, he had a very good relationship with the PBA. The relationship began to deteriorate within the first three or four months because of the soda fund investigation and the improper strip search of B.B. when the PBA did not want their members to get disciplined. This was the subject of prior disciplinary proceedings that have already been concluded.

Josh Sheppard is Beu's daughter Kimberly's boyfriend and the father of his granddaughter. Kim Beu was a Vineland police officer but no longer is a police officer. Josh Sheppard was also a Vineland police officer, but he is no longer with the department. They were never married and still are not married. They did not live with Beu. There came a time when Beu became aware that there was an allegation that he showed favoritism to Sheppard in an IA disciplinary matter. The director of public safety, Alicea, two and a half years after the incident told Beu there was a complaint by other officers that the discipline given to Sheppard was not in line with the proposed discipline to be given to Sgt. Shaw.

The underlying incident that led to the disciplinary action against Sheppard was that Shepard and Alessandra Rivera and other police officers were handling a call and there was going to be a report need to be taken and possibly an arrest and then there was a warrant arrest taking place at the scene of the same call. Sgt. Shaw was in the station in the sergeant lieutenant's office and spoke with Sheppard and expressed that he did not want too many people tied up on the call and wanted one person to handle everything. Sheppard's account was that he wanted one person to make the warrant arrest and one person to handle the other part of the call and the rest of the officers on the scene to clear. Sheppard did the warrant arrest and Rivera did the other part of the call. Words were exchanged at the station and Rivera apparently got loud with Sgt. Shaw and there was allegedly some shouting and door slamming by Rivera. Sheppard was chastised for being in the station and handling the call and then Shaw wrote them both up for insubordination. Sgt. Shaw filed a Critical Incident report dated November 17, 2017, regarding Sheppard and Rivera. (R-143.) Beu was not aware of the filing of the critical incident report at the time it was filed and normally would not be made aware of it until it made its way up to him upon the completion of the IA investigation. The only time he would be advised of something from the get-go would be if there is something criminal involving an officer and he would be notified right away if it required an immediate suspension.

An IA investigation was triggered by the filing of the critical incident report and was investigated by Lieutenant Steven Triantos who completed a report. (R-144.) When the report was completed, Beu reviewed the report and met with Triantos to discuss the report. Triantos did not recommend any discipline to be imposed in his report. When he met with Beu he did not verbally recommend a specific disciplinary penalty. Beu's decision on the penalty to be imposed on Sheppard and Rivera was that Sheppard received verbal counselling and retraining because of some safety issues involved and Rivera was also given verbal counselling. When he told Triantos he was issuing verbal counselling, Triantos did not object or complain about the level of discipline. Triantos did not make any recommendation for discipline and the only recommendations in his report were for what charges he felt should be sustained or not sustained. Verbal counseling is a low level of discipline. Beu decided that it was appropriate with regards to Sheppard because Sheppard gave a completely different account of the incident than Sgt. Shaw

did. He said Shaw told him that two people to take care of the call, one officer for the burglary and one officer for the warrant, then the officers to clear. Shaw's account was that he wanted one officer to handle everything. When they spoke to the other officers that were present at the time in the sergeant lieutenant's office, they could not substantiate if Shaw said he wanted two people to do the call or one person to do the call. Sheppard had said that the call was hectic. Rivera said there were a lot of people there and that it was loud and done over the telephone. Beu looked at it as a miscommunication more than an insubordination but wanted to err on the side of the supervisor, so he did sustain it, but issued a minor level of discipline. The same went for Rivera, that when they talked with the other supervisors in the lieutenant's office at the time, they minimized the incident with the alleged door slamming and shouting. Insubordination is a serious charge and if an order is given and the officer blatantly refuses to do a direct order, that is insubordination. Confusion, and not getting it done the way it was supposed to be done is a different level from Beu's perspective.

Sheppard's relationship with his daughter did not impact on Beu's decision to sustain the discipline or the level of discipline that he imposed. The director questioned it but never questioned the level of discipline imposed on the other officer involved in the call. Alicea never explained to Beu how the other officers knew about the outcome of the IA investigation. Alicea alleged that the complaint came from Triantos.

Beu had never received any complaints from anyone that the discipline he imposed on someone was too light. The PBA never complained that he imposed too little discipline on someone. Beu later learned many months later that the CCPO had opened an investigation into his handling of the Sheppard matter. The Shepard incident occurred on September 10, 2018, and the complaint was made July 3, 2019, according to the witness notification form Beu received. (R-149.) Beu was interviewed by Ron Cuff from the CCPO.

Beu never showed favoritism to Sheppard. He has put in for assignments throughout his career that he did not get specifically because he was not the best candidate. Beu was not aware of any city policy he was violating by rendering any disciplinary conclusion in the Shepard IA matter. No one from the city administration ever

told him that he was violating any city policy by handling discipline matters involving Shepard – not Tonetta, not Dickinson and not Alicea.

The general order on fraternization and relationships from the VPD, GO 2015-10, was promulgated by his predecessor, Chief Codispoti. (R-164.) Beu has not had a personal relationship with Josh Sheppard as said term is defined in the policy. He has not had a romantic relationship with Josh Shepard as defined by general order 2015-010.

A member of the immediate family shall be defined as the spouse or dependent child of a local government officer residing in the same household. (R-166.) Josh Shepard was never Beu's spouse, a dependent child or lived in the same household as Beu. The prosecutor's office concluded at the end of their investigation into this matter on September 3, 2019, that Beu was exonerated, which under the IAPP means the incident occurred but there was no violation. (R-152.) The report mentioned Beu not being required to but possibly recusing himself in the future. He never knew that was permissible as the chief of police and called the prosecutor and spoke with her about that. He thought as the chief of police he had to make decisions and did not know he could pass it to somebody else. Prior police chiefs had children that were police officers, and he did not recall them recusing themselves for anything.

The report from the prosecutor further indicated that Director Alicea could not direct anyone to release information about confidential IA files and asking for a report about an IA investigation was inappropriate and should not have been complied with. Beu felt that this was binding on him because the prosecutor is the chief law enforcement officer of the county and she is the head of IA and governs how it is done pursuant to the AG guidelines. The letter also addresses how the city should handle requests related to Beu and his IA files and that any requests for his files must go through the prosecutor's office and that Beu was to notify all of his command staff that they are not to release IA files to anyone other than Beu. (R-152)

The final notice of disciplinary action in regard to the Josh Sheppard matter reads "Officer Joshua Shepard is the father of a child through his relationship with Officer Kimberly Beu and as such is the father of Chief Beu's grandchild" This part is true.

“Accordingly Chief Beu had a direct relationship/conflict of interest in his intercession with the disciplinary action originally proposed against Officer Joshua Shepard with that intercession resulting in a reduced disciplinary penalty for Officer Shepard.” (J-1 at 3.) That part is not true. There was no proposed penalty that Chief Beu reduced, and he did not have any conflict of interest. He did not show favoritism to Shepard in any way in connection with the discipline imposed regarding this IA investigation. If anything, Beu learned later on that the prosecutor’s office believed he should not have sustained a complaint against Shepard based on their review of the file.

Kimberly Beu is his daughter, and she worked for the VPD for almost ten years. Prior to that she worked with the Vineland police department as a dispatcher. When she was hired, Beu was a captain.

Every year there was a bidding process and mass transfers at the end of the year. It was contractual that officers were able to bid shift selection if they are on patrol division based on seniority. Officers would pick their first, second and third choice of requested shift start times which had to be submitted by mid-November and if they could be accommodated, they usually would be. The platoon commanders and patrol division captain would get the list and go through it and come up with the shift selections. It was a lengthy process. Also, at the same time at the end of the year the specialty assignments would come out as well. Once the platoon patrols were made up and the units were finalized, a massive platoon transfer order went out showing all the transfers and assignments. Usually, the patrol division commander prepares the transfer order for the chief with input from some of the other commanders. They would go into the system and issue the order with Chief Beu’s electronic signature on it because as Chief, everything came through him.

It was not Chief’s Beu usual practice to personally pick people for the various units because the agency is too large, and he would defer to those officers who work side by side with the individuals to determine who would be the best candidate for the unit. The only time he got involved with picking people for any particular unit was for the canine unit because he served as a canine officer for over a decade and was a certified trainer and

liked to be involved in the canine selection, so he would give his suggestions. Otherwise, he was pretty much hands off unless he objected to something.

Chief Beu's predecessor, Chief Codispoti, instituted the unwritten "Chief's" rule requiring an officer to work at least three years on patrol before being assigned to a specialty unit. There were exceptions if an officer had prior military experience or came from another police department or corrections facility. The idea was to have a well-rounded officer. The priority in staffing within the police department was that the patrol division had to be staffed first. It is the backbone of the department. It was a safety issue as the department could not operate without a fully staffed patrol division as the patrol division responds 24/7 to 911 calls.

Chief Beu is aware that one of the allegations in this case is that when he was interviewed by the CCPO on December 18, 2019, he falsely testified that he had no influence over his daughter Kimberly Beu being assigned to the juvenile unit. This allegation is not true. He did not do anything to influence the selection of his daughter to the juvenile unit in April 2018.

The personnel order with transfers lists Kimberly Beu as being transferred to the services division, juvenile unit effective April 8, 2018. (R-132.) The superior officers in the juvenile unit at that time were Sgt. Shane Harris, and Lt. Lene Bowers, who later became captain. Numerous officers in the transfer order were field training officers who were being transferred to patrol. New officers that have graduated from the academy are initially paired with a field training officer (FTO) for approximately twelve weeks and are rotated to learn the various aspects of police field work. At the end of their training time, they would be evaluated to determine if they were ready to be cut loose on their own. Nothing was done to delay these assignments until his daughter met the Chief's rule three years required experience. These transfers were not done at the end of the year because they did not have adequate personnel on patrol. Chief Beu never told Sgt. Harris or Lt. Bowers that he wanted them to pick Kimberly Beu for the juvenile unit. He never asked a third party on his behalf to advocate for his daughter to be in the juvenile unit. He did not want his daughter to go to the juvenile unit and initially objected because he anticipated there would be some type of uproar over it no matter what he tried to do.

Kimberly Beu ended up in the juvenile unit because Sgt. Harris and Lt. Bowers wanted her in juvenile. They also wanted a female officer back in the unit to replace the female officer that was transferred out. Chief Beu deferred to the unit supervisors because they knew what they needed in their unit.

Lene Bowers hated Chief Beu at the time because she received some discipline concerning an investigation into the community policing fund. They did not see eye to eye, and she did not like it. They still worked together professionally, and he respected her and still does, but there was no love lost between them. He did not think he could go to her and ask for a favor.

Other than issuing the personnel order under his authority as chief of police, he did not play any role whatsoever in his daughter's selection to the juvenile unit.

Felipe Laboy was transferred to the juvenile unit at the same time as Kimberly Beu, April 8, 2018. (R-132.)

The CCPO conducted an investigation into Chief Beu's conduct with respect to his daughter Kimberly's assignment to the juvenile unit. The allegation was that Chief Beu provided special treatment to his daughter by placing her in a specialty unit without having the required three years on the job. The CCPO's investigation results were that the allegation was unfounded. (P-3 at 3,1c.) He received notification from the prosecutor's office that he had been cleared. (P-4.) The allegation set forth in J-1 regarding Kim Beu states "On December 18, 2019, when interviewed by CCPO's investigation staff Chief Beu falsely testified that he had no influence over his daughter Kimberly Beu being assigned to the juvenile unit." This is not true, he was not untruthful with Ron Cuff.

Chief Beu had conversations with Ron DeMarchi in the spring of 2017 about DeMarchi's desire to be promoted to sergeant. DeMarchi would campaign to a lot of people in the agency he thought could assist him in either getting promoted sooner by the skipping process or whatever. DeMarchi constantly badgered Beu into listening to him why he should get promoted and other people should not. He started when Beu was a captain but definitely continued when Beu became chief. He did not just do it to Beu, he

did it to Finley as well and anybody he thought could help him elevate his promotion quicker.

The City of Vineland is a civil service agency, and they test and promulgate a list which is certified, and they promote off the list of eligible people on the list. As chief, he did not have the decision-making authority as to who got promoted and who did not. The appointing authority is the mayor and the city. He was not consulted with this administration. When it came time for promotions the city would ask Beu for the certified list so he would go to personnel, get the list certified and the list would come back with the name of eligibles, and he would tell the city who the eligibles were or give them a copy of the list. That was the extent of his input into promotions.

Beu attended the Phillies opening day game in April 2017 in Philadelphia. He went with Tom Riordan and Bill Riordan and Tom's wife drove them. They had bought a package deal from phillietailgaters.com that included food, beverages and game tickets. The bar attached to the stadium was McFadden's and they went in the morning around 10:00 a.m. as it was for an afternoon game. There were a lot of people there that he knew not only from the agency but from the City of Vineland and surrounding areas. Initially they served breakfast sandwiches and later mini-cheesesteaks and hot dogs and the bar eventually opened. He got a light beer from the outside bar and did go inside because it was freezing out. The bar was crowded. While he was inside and talking to other people, he decided to get another drink and went up to the bar which was packed. He saw Tom and Bill Riordan at the bar, and he got Tom's attention to order him a drink, which he did. While he was standing there Beu was approached by DeMarchi. Tom and Bill Riordan were right next to Beu. Both Ron and his wife were there and Beu spoke to them. DeMarchi initially said hello and how was he doing and the conversation quickly turned to promotion and that he needed to get promoted and when was he going to be promoted. DeMarchi's wife was saying that Beu had to promote 'Ronnie'. At the time, DeMarchi was number five on the list and they were not promoting anyone as there were no openings at that time. The list was only going to be good for another six months or so, so DeMarchi was getting worried that he would be reached before the list expired and a new test would come out and there would be a new list. He constantly spewed venom on Terry Hall who was ahead of DeMarchi on this list. They do have the rule of three in

Vineland and DeMarchi wanted Terry Hall to be skipped. Beu never told DeMarchi that he would skip Terry Hall in favor of DeMarchi. Beu calls Terry Hall "T" and not the other name they have been bringing up a lot. Terry Hall had a good record and a clean jacket with no discipline and DeMarchi was worried about it. Beu told DeMarchi that he would be okay, the process would run its course. Beu got his drink and tried to get out of there. During his conversation Beu never said anything about wanting to have sex with Suzette. He never said he wanted to take Suzette home. He never told either Ron or Suzette that Beu was going to get him promoted. Beu never said he was going to skip "T-Bag". That is what DeMarchi called Terry Hall all the time. Beu never called Terry Hall "T-Bag". Beu was never shouting about promotions. The conversation was not long. At one point Tom Riordan told DeMarchi this was not the time and the place and to leave Beu alone and stop badgering him about promotions. At the time of this interaction with DeMarchi, Beu had only one light beer. Riordan had gotten him another drink, but he did not finish it and decided to go into the game, and you can't bring alcohol in from McFadden's so Beu had to dump his beverage before going into the stadium. Beu is not a big drinker.

This was not the first incident where Suzette asked to get her husband promoted. There was a previous occasion at Wawa when Beu and his wife ran into the DeMarchis, who had their kids in the car, and they brought up about DeMarchi getting promoted. Usually, it was Ron who brought it up with Beu because he saw Ron much more at work.

After Beu left the bar and went into the stadium he did not see the DeMarchis for the rest of the day. Beu went home with Bob DeMarchi and Gene Sherbin and does not believe they stayed for the entire game.

Beu is certain that at no time during his interactions with the DeMarchis at the Phillies game did he ever mention having sex with Suzette or taking her home. He did not say anything that could be remotely construed to being 'I want to have sex with your wife and I will promote you'. That statement was never made.

Beu is aware of another allegation approximately five or six months later that allegedly took place in Beu's office, where DeMarchi alleged Beu made comments again about DeMarchi's wife and also made comments regarding his daughter. Between the

incident at the Phillies game and the incident in Beu's office, DeMarchi never objected to any of the comments Beu made. Not once did DeMarchi say to Beu 'don't ever say that to my wife', or 'I can't believe you said that', absolutely nothing.

Beu told his secretary, Stephanie Adams, that he did not want to talk to or see Ron DeMarchi, but there were times that he showed up at Beu's office, and Beu was not going to turn him away in case it was work related. Her desk was located a few feet from the doorway to Beu's office. It was very close, and she could hear anything that was going on inside his office. He trusted Stephanie with confidential information, that is why she was selected to be his secretary because she is a trustworthy individual. Ninety percent of the time Beu's office door was open. Matt Finley was in Beu's office discussing something work-related when Ron DeMarchi came in and asked to speak with Chief Beu. Finley offered to leave and DeMarchi told him he could stay. The office door was open. DeMarchi immediately started about wanting to get promoted and wanting his son to go to St. Augustine Prep and did not know how he was going to pay for it and wanted the promotion to pay for the prep. His son was not even accepted to prep at this point because DeMarchi was asking Finley to help get his son into the prep, which is a process. Finley carried the conversation as his son went to the prep, and he knew how the prep worked. DeMarchi asked Finley if he knew anybody that could help get his son in. Beu did not say much during this conversation as he knew nothing about the prep and did not engage in any conversation about promotion. All Beu would have said was that they were not going to skip anybody because DeMarchi brought up Terry Hall again. He told DeMarchi as he had repeatedly told him that it was not Beu's call. Finley carried the conversation which continued for a little bit, and then they all got up and left Beu's office at the same time and walked out of the building. Beu thinks it was around lunch time. Ron DeMarchi's truck was parking along the curb outside of the building on the side street and he had his kids in the truck. Beu said hello to the kids. He did not know the son, but Beu's daughter Amanda was an elementary school teacher and taught DeMarchi's daughter. Beu got in his unmarked patrol car and left. At no time during this interaction did Beu ever say anything about having sex with DeMarchi's wife. He never said that he would get him promoted if he could take Suzette home. He did not ever mention wanting to have some sort of sexual relationship with his daughter. Looking back on this, there is nothing he said that could be remotely construed as those sorts of comments.

Beu became emotionally upset while testifying and said that they called him a pedophile and he has waited five years to tell his story.

Beu never said he was going to skip Terry Hall and never used the phrase 'T bag'.

Beu admits that he is the type to joke around at work from time to time, but these are not the types of jokes he would tell because there is a line that you do not cross and do not joke about things like that, especially a child. The first time he learned that there had been allegations that he made these comments were from Rick Tonetta, after DeMarchi was in Tonetta's office and alleged the daughter comments were made, about a month and a half later Beu believes.

Tonetta had called Beu and Beu was in his office, and they talked about it and there was no mention of the child initially. Tonetta told him about the allegations from the Phillies game about the wife. Beu was flabbergasted and could not believe it and told Tonetta that Beu was friendly enough with these people to joke around with them, but not like that, you do not say that. Beu later found out that Gelfand said that Tonetta said Beu said he can joke around with him, and he said it. That is not what Beu said. Beu told Rick that he was friendly enough with these people that he can joke around with them, but not like that and Beu did not say anything even close that could be misconstrued with 'I want to have sex with your wife'.

After the article came out in the paper, Beu had a subsequent meeting with Tonetta. Beu had been at an administration meeting at city hall. Tonetta knew that Beu was upset. After the meeting, Tonetta took Beu into a small conference room next to the mayor's conference room and told Beu that DeMarchi had made allegations about the daughter and Tonetta said he did not believe it and called DeMarchi a liar.

Beu made handwritten notes of what Tonetta said to him when he went over to city hall after the administration meeting on September 4, 2019. (P-9.) There is a note that Rick told Beu that he could not believe it was leaked to the media. These notes were

made after Beu and Tonetta spoke after the newspaper article came out on Labor Day weekend. Beu made these notes because he felt that they were coming after him.

The prosecutor's office conducted an investigation into these allegations. (P-3.) The prosecutor indicated that there was insufficient evidence to constitute criminal charges against Beu and issued a declination letter. They then proceeded with an administrative investigation. The allegations set forth in P-3, 2A – charges from Phillies game, 2B – allegations of promoting DeMarchi and skipping Terry Hall; and 2C – alleged comments about both DeMarchi's wife and daughter, were all unfounded. (P-3.)

During April 2017, Beu did not state that he was going to promote or think about promoting T Bag, referring to Officer T. Hall, who was one spot ahead of DeMarchi as alleged in J-1, at 1 schedule A. Beu did not make a comment in Ron DeMarchi's presence that suggested that he would seek to get him promoted if Beu could have his wife, Suzette. Beu did not make a comment to DeMarchi in August or September 2017 that Beu would get him promoted if he could have Demarch's wife or his pre-teen daughter.

Beu recalls Todd Gelfand asking him questions about these allegations. During a July 18 telephone conversation with Todd Gelfand, it is alleged that Beu untruthfully denied making these comments. Beu did not untruthfully deny making these comments. He denied making these comments. His denial was truthful. There is also an allegation that when Beu was interviewed by the prosecutor's office on December 18, 2019, he again untruthfully denied having made the so called DeMarchi comments. That is not true. It also alleges that Beu untruthfully denied ever having referred to Officer T. Hall by the nickname T-Bag'. He did not ever refer to T. Hall as 'T-Bag'. He did not engage in any of the conduct alleged in this FNDA as it relates to the DeMarchis.

Beu first learned that Todd Gelfand was going to be involved in conducting some sort of investigation for the City of Vineland in or around July 2019. Beu knew Gelfand from his prior representation of the City of Vineland in the White case and the Bard case. Beu was named individually in the Bard case and Gelfand represented him and the city. Beu initially was pleased when he learned Gelfand was going to be conducting the investigation in this case because Gelfand had done a good job in those prior matters.

Beu's understanding was that Gelfand would be investigating complaints that Beu and Austino made regarding retaliation by the PBA and the allegations contained in the drafted, unfiled pleading.

Beu first learned that Gelfand wanted to look at IA files shortly after they first started discussing things within a month, maybe sooner. Beu wanted to cooperate, but he also wanted to make sure that he proceeded in a manner that was proper and in accordance with the guidelines. He had never dealt with anything like this before. It was the first time he had ever dealt with anything like this. Everything Beu has ever read about police IA files is that they are to be confidential and only released under strict circumstances and conditions. Beu wanted to make sure that if the files were to be released that it was done properly so the city and he did not face any legal consequences because of it.

Several years of the VPD's IA records for every officer had been court-ordered to be released in the White case, so the city had hired a company to put all these records on a disc. Mr. Gelfand was in possession of this disc in connection with that case. Beu and he discussed the fact that he had this disc, but Gelfand said he was not permitted to use it for this case, he was only permitted to use the drive-in defense of the White case. Gelfand was asking for permission to view the IA files for this case.

A June 2017 email exchange between Tom Riordan and Ron Henry at the prosecutor's office concerned the release of the prosecutor's office IA investigation into the alleged wiretap matter. (R-204.) This email appears to authorize Mr. Gelfand to have the file and authorize the release of the file to solicitor Tonetta. When Beu was talking to Gelfand about releasing files, he did not know that this email existed. Based on Beu's discussions with Ron Henry, he never indicated that he remembered sending this email.

According to the IA guidelines, there are four specific reasons when IA files can be released and then a fifth reason that calls for a good cause analysis. In Beu's opinion, the request for IA files in this case did not fall under the specific delineated reasons set forth in the guidelines which were: if disciplinary/administrative charges were brought against an officer; defense of a lawsuit; at the request of the county prosecutor or Attorney

General; and upon a court order. The only available option that applied in this case was to do a good cause analysis to allow for the release of the files or not.

Beu had a conversation with Gelfand as to ways that he could legally obtain the IA files and made suggestions to him. Beu suggested maybe Gelfand could get a court order, but Gelfand did not think he would be able to get a court order. Beu's next suggestion was to contact the prosecutor's office and Gelfand thought that was a good idea. Beu gave Gelfand the name and contact information for the First Assistant Prosecutor, Harold Shapiro and Gelfand said he would reach out to Harold. If it comes from the prosecutor's office to release the files, it is clear cut. The files get released and everyone is covered. Gelfand did reach out to the prosecutor and the prosecutor responded. (R-10.) They both understood the prosecutor's response to mean that Beu was not to release the files. Later, the prosecutor's office clarified that letter and indicated that the decision whether the files could be released was in Beu's discretion. (R-15.) In addition to directing Gelfand to the prosecutor's office, Beu contacted the legal division of the State Association of Police Chiefs to obtain guidance as to what he should do. Beu emailed Ray Hayducka for assistance in determining whether or not to release the IA files. (R-4DD.) Beu also reached out directly to the prosecutor's office via emails, text messages and telephone conversations. He sent a text message to the Prosecutor Jennifer Webb-McRae when he could not get in touch with her on the telephone to discuss the IA files. (R-10A.)

Beu sent an email to the prosecutor questioning the investigation and whether the investigation violated the AG guidelines and whether he should or could give the files. (R-47D.) Adam Austino filed a grievance in July opposing the release of the IA files. (R-4F.) Beu was concerned that he was being caught in the middle. He wanted to proceed in a manner that was legally justified and followed the guidelines and also wanted to proceed in a manner that protected the rights of employees. Both the chief's association and the prosecutor's office were telling him it was his decision to make but the confidentiality of the files he was entrusted to maintain as the chief was the priority. Austino was very upset and on the verge of legal action.

In January 2020 Beu received the first directive from Public Safety Director Alicea regarding the release of the IA files to Gelfand. (R-47.) Beu was concerned whether Alicea could legally order him to do it and whether or not it violated the IA guidelines and whether or not the investigation was even proper. There were some questions about whether Gelfand's human resource investigation was actually an IA investigation which is not supposed to be conducted by a third party but by the agency or the prosecutor. When Beu received R-47, he believed it conflicted with R-152 and whether or not the director had the authority to tell anybody to release an IA file to him because the prosecutor's office's letter said that he did not. (R-152.) The bold italicized portion in R-47 was directing Beu to produce his entire IA file. According to the prosecutor, the authority to release the Chief's file had to go through her. Beu was directed by Alicea to respond to his directive by Monday, January 27, 2020, at 10:00 a.m. (R-47.) Beu forwarded this directive to the prosecutor's office because she was his boss. Beu responded to the directive at R-47D. Prior to Beu receiving this directive, the PBA had made complaints, Austino had made complaints to the city and Beu had made complaints to the city regarding the PBA, city administration, the mayor, city solicitor, and the business administrator. Beu requested an extension because he received the directive at the end of the day and was trying to get in touch with attorneys for legal advice and the time constraints were unreasonable. Beu did respond at 9:09 a.m. before the 10:00 a.m. deadline on January 27, 2020. Beu received an email from Director Alicea indicating that the "IA files for which you are the target is the only addition to Mr. Gelfand's list attached here again for your review." (R-49.) Beu had concerns because he did not have the authority to release these files according to the prosecutor. Beu described this as seeking unfettered access to his IA jacket. Alicea wrote in the last paragraph: "Accordingly no additional time will be granted. Continued failure to comply with my directive may as previously advised result in a charge of insubordination. Copies of the files, records, must be released immediately to Lieutenant Landi to be delivered to Mr. Gelfand." He understood Alicea to be telling him to release the files without any guidelines or specifics and just to release the files. Beu believed this conflicted with what the prosecutor had said in R-152.

Beu forwarded Alicea's email to Jennifer Webb-McRae for her review and legal advice. (R-49A.) Beu responded via email at 8:05 p.m. to Alicea's email stating he

“elected to wait until 2:43 p.m. to reply, deny my request and demand an immediate explanation and response on some point fully knowing that I secured at 2:30”. (R-51.) Beu explained that Alicea knew he finished work at 2:30, so Beu had to go back on that day to respond. He did advise Alicea that he reached out to the prosecutor’s office for guidance. Beu indicated in this email that he had not found good cause to release the files. (R-51 at 2.) Alicea’s original directive in R-47 stated “None of those guidelines appear to preclude the requests for Mr. Gelfand to review internal affairs materials for this purpose. Should you disagree, however, this directive only requires the itemized reason for denying Mr. Gelfand access to any materials on the attached list. I ask that any materials which you are inclined to object for Mr. Gelfand reviewing you are directed to fairly and reasonably state the basis for objection in writing.” Beu believed he was responding to the directive on January 27, 2020, when he sent R-51 to Alicea. He responded by the time given and indicated the reasons why he felt good cause did not exist and was not releasing the files.

Beu received another director from Alicea to release the files stating that the AG’s IA guidelines do not apply to the city’s HR investigations and purport to disqualify Beu. (R-53.) Beu was concerned as he did not think the director had the authority to disqualify Beu based on correspondence he had with the prosecutor’s office and the AG’s guidelines. Just because Alicea did not like the answer he received from Beu, he could not disqualify him. If Beu was disqualified, Deputy Chief Casiano would have been in charge, and he was the subject of one of the IA files being sought in the Basir-Bey improper strip search case. (R-57, item 1F.)

Beu sent an email to City Solicitor Rick Tonetta and Assistant City Solicitor Mike Benson seeking legal advice on Alicea’s directive. (R-54.) He did not receive a response. A letter from Mike Benson to First Assistant Prosecutor Harold Shapiro, copying in Beu. It was Beu’s understanding that the city had been told they could not seek Beu’s files and that the files for other officers were under Beu’s discretion. (R-55.) While this was going on Austino was continuing to object to Gelfand getting access to IA files and his entire investigation. Austino sent an email to the prosecutor’s office with a subject matter “Gelfand sham witch hunt investigation and his use of an illegally and unethically obtained criminal investigation report.” Ron Henry from the prosecutor’s office responded to the

email on February 6, 2020. (R-55D.) Beu was copied in on the emails, and he considered this when he was deciding what to do.

Director Alicea issued a third directive to Beu with a February 21, 2020, deadline. In Beu's mind nothing had changed between the time the first two directives had been issued that would alter his prior good cause analysis. (R-56.) When Beu asked Alicea why he was issuing these directives Alicea's response to him was that he was being told to do so. Beu looked at it as the Director was caught in the middle as well. This directive also gave Beu the option of providing a written explanation if he was not going to release the files. The prior directives had the files being released from Landi directly to Gelfand and the third directive has them being produced to Rick Tonetta. Beu does not recall exactly any conversations about this change.

A letter from Prosecutor Webb-McRae to Alicea was sent before Beu had the opportunity to respond to the third directive. (R-58.) In that letter she advises that she is going to have a more formal response as she was going to get guidance from the AG's office. It was Beu's understanding that he was not to take any action until that happened.

The prosecutor sent Beu a letter dated February 23, 2020, advising Beu regarding what he should do with respect to the IA files. Basically, she indicated that request for Beu's files had to go through her and that Beu was to do a good cause analysis for the release of other officer's IA files. She reiterated that he had to maintain confidentiality of the IA files. She stated that the city is free to hire anyone it desires to conduct any investigation except law enforcement IA investigations. The prosecutor stresses "the internal affairs process is one that encourages confidentiality even permitting anonymous complaints so that individuals participate fully truthfully to assure the public confidence in the fact that law enforcement can and will govern itself. This section specifically guides the chief to grant such access to internal affairs files sparingly given the purpose of the internal affairs process and the nature of the any allegations against officers." (R-59 at 6.) The prosecutor also reminded the city that they should stop threatening discipline to gain access to the files and that if discipline was to be taken against him, he would be in the right for making a good cause analysis. (R-59.) Beu also had a text message exchange on February 24 with the prosecutor about this same subject. (R-60A.) Beu

sent her a copy of February 24, 2020, directive (R-60) he had received which was contradictory to her directions and advised that they were threatening him with discipline. She told him that the city was out of line for threatening him with discipline and “you will win that eventually. You just need to decide.” She also indicated that “If you don’t believe they should get the files you should stand firm.” (R-60A.) The February 24, 2020, directive only directed him to turn over the files and did not give an option to provide a written response. He believed this conflicted with the prosecutor’s letter of February 23, 2020. (R-59.) In her letter, she advised Beu to set parameters. He could make a good cause analysis, deny or not deny and should not be threatened with discipline.

The deadline given in the February 24, 2020, directive was 9:00 a.m. on February 25, 2020. Beu did respond by the deadline. He advised Alicea that he thought his directive conflicted with the prosecutor’s letter and explained his reasoning and areas of concern with releasing the IA files. He addresses the conflict issue which the prosecutor’s office would not weigh in on and told him to consult with his own attorney who felt that no conflict existed. He also addressed the issue that the individual they wanted Beu to defer to, Pedro Casiano, had a conflict. He also addressed that they should not be threatening discipline against him. He highlighted guarding the confidentiality of the IA files. (R-61.) Beu raised two additional items of concern that factored into his good cause analysis. That was that Gelfand’s representation of the City of Vineland was a conflict and that the CCPO may proceed to conduct a criminal investigation into Austino’s allegations that Gelfand illegally accessed and used information in IA files he obtained regarding the wiretap investigation. (R-61 at 2.)

Beu did authorize Gelfand to review certain documents on his list. Beu broke down the list and responded to each item. As to section 1, item A, he granted access and set parameters. Section 2 on the list were not considered IA files, and they were ready for Gelfand’s review upon his contacting Beu to make arrangements to receive them.

Beu stated Gelfand was representing him in the Bard case at the same time he was requesting records in this case. Gelfand was Beu’s attorney at the time so that was a concern. Austino was objecting to the release of the files. Beu was also concerned with the legitimacy of the investigation as a whole and Alicea’s part in the investigation as

he was being investigated by federal authorities at the time as well and Beu knew some of the particulars of that investigation. The investigation was in the newspaper, and it was reported that there was a search warrant executed at Alicea's residence. The federal raid team searched his residence and seized a laptop, computer, cell phones. They also served a search warrant on city hall and obtained email server records and more computer records. Beu had direct discussions with federal authorities in Homeland Security and spoke with Special Agent Nick Tranchitella. The investigation concerned the improper issuance of U visas. There was a woman in Philadelphia involved in a high-profile case and she was seeking asylum and had been granted a U visa from the City of Vineland. They came to Beu and asked him questions about the U visa, but he did not know what they were talking about since he did not issue the U visa. It came to light that Director Alicea had been issuing the U visas, and he was not authorized to do so. The federal agents went back several times to the police department and would bring Beu files to review to see if he signed certain documents or if he was aware of certain things. Beu believes they questioned Alicea about it as well. One time they brought an FBI agent with them as well and told Beu that Alicea had lied to them and they believed they had enough to charge Alicea with lying to a federal investigator and that they were going to try and use Alicea as an informant for something else the federal authorities were investigating in Vineland that Beu was not involved in. This investigation was going on during the time that Alicea was issuing the directives to Beu and continued after Beu was suspended on February 26, 2020, because federal agents came to Beu's residence while he was suspended and questioned him again.

Beu was shown an article that appeared in the newspaper the "Vineland Daily Journal" on February 18, 2020, entitled "Feds Want to Know if Crime-Victim Visas Issued in Vineland are Valid" to refresh his recollection of the time period involved. (P-21.) The warrant was issued January 31, 2020, and the article appeared on February 18, 2020. Beu had been dealing with the federal agents a couple of months before the search warrant was issued and he knew it was coming but did not know the date. Beu did not disclose to Alicea the reason he was not turning over the IA files to him was due to his involvement in this investigation because it was an ongoing investigation, and he was advised to keep it confidential. He is talking about it now because they had enough time to act. Beu was not concerned if Alicea had just made a mistake about his authority to

issue the U-visas, he was concerned that the homeland security agents indicated Alicea lied to them and they were going to charge him with a 1001 charge which is lying to a federal investigator. That was what was concerning Beu about turning over the files to Alicea. Alicea was never charged with a 1001 charge.

Also weighing into Beu's decision making thoughts was whether Gelfand's investigation was proper and the allegations that Gelfand accessed IA files that he already had on a disk from another matter that Austino alleged that Gelfand accessed a file and showed it to Austino during an interview. Beu also questioned whether the investigation was fair and impartial because he did not get the impression from Gelfand that it was unbiased. It became apparent during the first few months that Gelfand was being directed by the city, and he was going down the path they were pushing him. Questions were not being asked about Austino's or Beu's complaints. Ninety percent of the complaints made against Austino and then some things that were said about Beu.

At no point was Beu not releasing IA files in order to hide information that he did not want released. He did not think there was anything in there that was improper. He wanted to release his own files but was told he could not. He had nothing to hide. He just did not give them everything because it would have violated the confidentiality of the IA files. He went back and forth in his mind repeatedly and made the decision at the end that he just did not think that they had good cause for the reasons they gave. They did not give legitimate reasons. Beu did not think good cause existed, so he finally made the decision, and he knew that they were going to come after him, which they did. He was suspended the day after.

Ultimately the city secured the files from the prosecutor's office after several months of back-and-forth correspondence that Beu has since seen now, but did not know back then.

The FNDA states that "From June 16th, 2019, through and including the date of the issuance of these charges Chief Beu never allowed for Special Counsel Gelfand to have access to the VPD IA files and other non-internal affairs materials for review". (J-1.) That

is not accurate. Beu authorized access to documents listed under Gelfand's IA list and also released non-IA documents. (R-61 at 2.)

The FNDA further states that "Chief Beu insubordinately did not comply with the order and directives issued by Director Alicea requiring Chief Beu to provide access to Special Counsel Gelfand for files by date certain or to itemize any objections and explain the basis in response to written orders and directives by Director Alicea throughout January and February 2020 to date." (J-1.) This is also not accurate as Beu responded to Alicea within the time frames provided on every single directive and provided written statements of the reasons why he was or was not granting access. Beu's conduct was not insubordinate as he was following instructions given by the Cumberland County Prosecutor.

On cross-examination, Beu was shown P-20, which was the January 16, 2019, letter from the attorneys for the PBA to Mr. Tonetta and Mr. Tonetta's response to Doug Long dated January 25, 2019. Mr. Tonetta adamantly informed the PBA that it would not engage in these types of discussions and that "With regards to the termination of the chief I am sure you are aware that the city cannot terminate any employee based upon the request of the union." Mr. Tonetta continues and indicates "We are a civil service community and must abide by those regulations. There are due process requirements to which everyone including the chief and all members of the PBA are entitled. (P-20.) Beu never saw either the demand letter from the PBA or Tonetta's response to same until this proceeding.

Josh Sheppard and his daughter have a grandchild of Beu's. Sheppard provided financial support to his grandchild. The prosecutor informed Beu in her letter that Beu's actions in that matter at least created an appearance of a conflict. An IA investigator in rendering a report does not provide recommendations for discipline. Triantos report sustained violations for insubordination, failure to submit a report by the end of the shift, failure to separate male and female prisoners in custody and failure to maintain consistent supervision over arrestees. Beu believed that Sheppard and Shaw gave different accounts of the order that was the subject of the insubordination charge. Sheppard stated in his IA interview that he was going to pick up the warrant arrests and Garvey was going

to pick up the burglary investigation. They did not hear what Shaw was saying, which is why they went to the supervisors' office and questioned the other supervisors.

Beu agrees that as chief it is important to avoid the appearance of a conflict of interest.

Regarding the Kim Beu transfer to juvenile, Beu did not initially know who was being considered for the transfer to the juvenile unit. He may have told Ron Cuff that in his interview with him. An email from Kim Beu to Beu, Matt Finley and Adam Austino, dated November 11, 2017, requested a transfer to the juvenile unit. (R-126.) Beu knew then that she had put in for it but did not know if she was being considered for it. He does not recall when he learned she was being considered for it. What he remembers is that he was adamantly opposed to it. He does not recall receiving any other applications for the juvenile unit. Captain Finley put out the solicitation for applications and indicated that applicants should send a letter or email of interest to Beu, Finely and Austino. As of November 11, 2017, his daughter did not have three years with the VPD. She was hired in March 2015 so the earliest she would have three years on would be March 2018. There is a huge annual shift realignment order usually done at the beginning of the year and done on a transfer memo form. They try to do it at the beginning of the year but there have been years when it did not happen until the second or third month, but he cannot recall when that happened.

R-131 is the big personnel order with the subject "Annual shift realignment and related transfers" for 2018. R-132 is personnel order 2018-004 with the subject "Promotions, transfers" and lists a number of officers. R-132 is the order that transferred Kim Beu to the juvenile unit. The timing of R-132 was influenced by a manpower issue in 2018 as they were waiting for the officers to come out of the FTO program.

Beu does not recall every single word he said to Ron DeMarchi on April 7, 2017, at the Phillies game. Beu went up to the bar and Suzette DeMarchi was there. He did not recall if she was sitting or standing. Ron DeMarchi was in the same vicinity. He never asked Suzette DeMarchi what Ron DeMarchi's best assets were. Tom Riordan did not say that either. The conversation between Beu and the DeMarchis lasted less than a

couple of minutes. He had a conversation with the DeMarchis in the summer of 2017 in the Wawa parking lot. Beu and his wife were there and the DeMarchis pulled into a spot next to them. Suzette rolled down the window and started having a conversation about Ron getting promoted. Beu does not recall what anyone said. His wife may have said hello to Suzette. Beu thinks he told Ron DeMarchi or Suzette that Ron would be fine and that things would work out just so he would leave Beu alone. They were both there together. Beu never told Ron DeMarchi in early June 2017 after Pacitto got promoted that he was skipping Terry Hall and that Ron DeMarchi would be promoted. It is not true because he cannot skip anybody. Beu does not recall DeMarchi asking him if Casiano was going to be promoted. Beu was captain of the criminal division when DeMarchi was in the detective bureau but did not have direct supervision over him, as there were two intermediate supervisors. Beu never said he wanted to have DeMarchi's wife. Beu does not recall telling Cuff that DeMarchi left the meeting in his office in a tither. DeMarchi appeared fine when he left the meeting. Beu knows he had at least one conversation with Rick Tonetta about the allegations regarding Suzette DeMarchi, but it could have been more. The note Beu references in P-9 was about discussions he had with Tonetta about the daughter, but it also included Suzette as well. The first discussion he had with Tonetta about Suzette was when Tonetta called Beu over to his office which was long before the time referenced in P-9. Beu was flabbergasted and shocked when Tonetta told him and Beu told Tonetta that he was friends with DeMarchi and they could joke around, but not like that. Beu does not recall how long the meeting with Tonetta was. Beu denied the allegation of sex with Suzette for a promotion for DeMarchi. He denied it and told Tonetta he did not say that and was shocked. It was the first time Beu had heard about it, when the Phillies game had been months earlier. Beu never spoke to Ron DeMarchi about the allegations. Beu did not tell Rick Tonetta that he had said to Ron DeMarchi, I'll promote you if I can sleep with your wife.

Beu took notes in reference to the subject matter of these proceedings. (R-215.) The notes were generated on the dates indicated or shortly thereafter. He kept the notes because it became apparent to him that people were coming after him and he took the notes to record different events as they occurred. Beu did not take any notes regarding the first time he was called into Tonetta's office. He did not take notes regarding the April 2017 Phillies game or the meeting with DeMarchi and Finley in August 2017 because

they were uneventful events and nothing happened that would require him to document anything until months later when these allegations came out. There was no reference to the daughter made in the first meeting with Tonetta.

The first entry in R-215 is from March 23, 2017, documenting a meeting with Gelfand. This was written months after the meeting. The first contemporaneous entry is probably the November 3, 2017, note. Beu first found out about the daughter allegation when the unfiled draft complaint came out in or about November 2018. He reviewed the draft complaint when he received it and went to the prosecutor's office with it with Adam Austino. They were both interviewed by the prosecutor's office. Ron Cuff interviewed Beu on December 18, 2019, in regard to the allegations in the draft complaint. (R-112.)

Gelfand's request that Beu produce the IA files was extensively discussed by way of email correspondence because it was an important issue to make sure the procedures of the IAPP were followed. Gelfand reached out to Beu in July 2019 and advised that he was doing an investigation regarding the allegations in the draft complaint. Beu believes it was a phone call with Gelfand where he indicated that he needed various IA files for his investigation. Gelfand believed he had most if not all of the IA files already in his possession from the Philip White case and was looking for permission to access that disk to look at the documents. Beu understood Gelfand wanted to make sure that he was observing the proper parameters of the IAPP and respecting the confidentiality provisions in those initial discussions. After his initial discussions with Gelfand, Beu suggested and Gelfand agreed that Gelfand should speak to the prosecutor about his requests for IA files. Beu gave Gelfand the information on who to contact and Gelfand did. Gelfand wrote an email dated July 17, 2019, requesting particular IA files to Beu which he forwarded on the State Chiefs of Police. (R-4E.) When Beu reviewed the email from Gelfand, he was able to identify some if not all of the different matters Gelfand was seeking. Gelfand's email indicates he was giving Beu a general idea of what IA and other files he was looking to review and if Beu could pass that on to the IA sergeant and have him coordinate the review directly with Gelfand for the files to be reviewed at IA as Beu suggested, with the IA sergeant to keep a list log of the files reviewed. (R-4E.) Beu and Gelfand discussed Gelfand coming to the IA department to review the files. Gelfand did not have any issue coming to the IA department to review the files. Beu stated the only

issue raised between he and Gelfand was whether or not Beu would allow him to take photographs or make copies of the files. That was one of the issues in contention that first came up. Beu would allow Gelfand to look at the files, but not actually reproduce them.

A grievance was filed by the Captain's Association, written by Adam Austino, in connection with Gelfand's request to review the IA files. (R-4F.) Even prior to this grievance being filed, Beu had issues in providing the requested files to Gelfand. Beu was concerned with the broadness of the original request and making copies of the files. He also had issues that Gelfand wanted to review the disk he had in his possession which contained all of the IA records for the entire department and Beu did not think that was proper. Gelfand did not ask for all of the files. Gelfand was not going to review the disk from the White litigation without Beu's approval. Gelfand went to Beu asking for permission to look at the files. After Gelfand's initial discussions with Beu, Gelfand reached out to the prosecutor's office for guidance as Beu suggested based on their discussions. Gelfand sent a letter to Mr. Shapiro on July 29, 2019. (R-8.) In response, Mr. Shapiro wrote "the prosecutor's office shall not direct the Vineland Police Department to release any documents." (R-10.) Gelfand then follows up seeking further clarification, copying in Beu to the letter. (R-11.) Gelfand was seeking clarification as to whether the prosecutor's office was saying that Beu should not produce the files or were they saying they will not intervene in the matter. Gelfand sent an email dated September 9 to Beu, Austino copying Long and Tonetta indicating that he had spoken to Mr. Shapiro and that Gelfand had misunderstood Shapiro's letter. (R-12.) Gelfand states "CCPO intended their response to mean that this was an issue that they are not going to direct such that it is the chief's decision as to whether this is an appropriate purpose for which to permit review of internal affairs files." (R-12.) Beu understood the prosecutor's position was that they were not going to intervene and tell Beu one way or the other whether he should produce the requested IA files when he received a copy of the September 17, 2019, letter from Shapiro to Gelfand. (R-15.) Beu had only been chief for approximately seven months and had not been involved in anything like this before

Beu advised Gelfand that his initial request (R-4E) was too broad and had to be narrowed down. Beu sent his response to Gelfand to former Chief Hayducka of the

Chief's Association. (R-4DD.) Beu was seeking Hayducka's guidance. Beu was looking for Gelfand to provide specific allegations of what was done wrong. Beu could not be sure whether he put in writing to Gelfand as of September 2019 that Gelfand needed to provide Beu with further details as to why he was seeking the specific files. An email from Gelfand to Beu indicates that he called Beu on September 9th to discuss arranging to review the files or confirming that Beu was still going to allow Gelfand to review the files. Gelfand continued that Beu could not speak to him about it because of being represented by counsel whom he anticipated Gelfand would hear from shortly. (R-16.) Gelfand followed up and wrote to Beu, Austino and Tonetta on September 24. (R-19.) Gelfand's email indicates he is seeking adequate review of IA files pertaining to "both sides allegations of workplace retaliation both sides of which allege retaliation because of, motivated by and perhaps consisting of allegations contained and investigated through police department internal affairs complaints." Gelfand continues "For a potentially meaningful investigation it is apparent to me that all such IA files which are alleged to be evidence of relation or the reason, motive, for any retaliation should be reviewed." Having reviewed this email Beu understood that Gelfand was seeking those files because the allegations of retaliation cannot be investigated without them. Beu did not get back to Gelfand to tell him where he stood because initially, he was dealing with an attorney from the Chief's association, Vito Gagliardi, who Beu was referencing in R-19. Beu assumed they would be stepping in, but they basically said the same thing as the prosecutor, that it was his decision, but make sure to maintain confidentiality. It was the chief's association attorney and later it became the other Mr. Bell, Jim Bell, who was representing him. Beu's actions from September 2019 until the end of 2019 were mainly based on advice given him by the prosecutor's office although his counsel weighed in also. The prosecutor's office did not tell Beu that he should not produce the files. Initially they said he could but constantly pounded home the confidential nature of the files. Then there was the allegation of improper accessing of the files which stopped things, and after that was cleared up, the prosecutor told Beu that the City should stop threatening him with discipline and could not coerce Beu into producing the files. It was Beu's decision and the most important thing he was concerned with was safeguarding the confidentiality of the files. There was a concern that the files should not be released to the public. There was also a concern of improper accessing the files with regard to Gelfand as well as whether the investigation was even permitted in the first place.

An email dated November 22, 2019, from Gelfand to attorney James Bell provided a revised list of IA documents and things Gelfand was looking to access regarding the internal whistleblower investigations and a separate list of documents he wanted Beu to provide for his review. (R-43.) Gelfand further indicates he has “revised the prior list of IA materials to the following which I request Chief Beu’s assistance in setting me up with internal affairs personnel who can help me with the following for review.” (R-43.) This list was more detailed than Gelfand’s first list and provided an explanation as to why he was seeking this information. Beu does not recall if upon receipt of this revised list whether he was going to grant Gelfand access to all or a vast majority of it, but he knows that he did start looking at in a different light because Gelfand provided him with more information. An email of December 16, 2019, from Gelfand to James Bell was sent in follow-up waiting for an answer as to whether and when Gelfand will be permitted by Beu to review the IA as well as other items. (R-44.) This was the state of affairs as of December 16, 2019. Gelfand comments that he has been seeking to review this information as far back as June 26, 2019, with Chief Beu and is now communicating with James Bell for about three months. James Bell responds a few hours later on December 16th to Gelfand: “As I’ve previously communicated the answer is that the chief intends to grant you access to the documents you seek or the great majority of them anyway as soon as I am able to help him draft an appropriate letter to you setting forth the procedures and limits.” (R-44.) Gelfand did provide Beu with more information and Beu was leaning towards releasing some of them. Beu did not know sitting here today what his state of mind was back then regarding which files he needed more information on.

On January 3, 2020, Gelfand emailed James Bell regarding “internal personnel complaint investigations which have been stalled for several months now due to a lack of decision from Chief Beu as to whether he will permit internal affairs files to be reviewed.” (R-45.) Beu did not know the reasons as to why no response had been given to Gelfand as of January 3, 2020. He was not sure if Austino’s allegation of improper access was still being investigated by the prosecutor’s office and finished at this time. Beu did not recall the dates. On December 18, 2019, Beu gave a recorded statement to Ron Henry of the prosecutor’s office regarding Gelfand’s investigation. (R-210.) Gelfand followed

up with James Bell via email dated January 22, 2020, saying he had not received a response to his prior January 3, 2020, email. (R-46.)

Public Safety Director Alicea issued a directive January 24, 2020, to Beu directing him to either directly or through counsel provide an itemized response to Gelfand to his request to review IA files. (R-47.) Beu was aware that pursuant to statutory authority 40A:14-118 “a chief of police is required to respond to an appropriate authority of the municipality.” Beu was concerned that Gelfand had added to his request IA files that Beu was the target of and the prosecutor’s office had a problem with that and said Beu cannot release them and any request for his files should go to the prosecutor’s office. Beu was also concerned with Austino’s allegation of improper access and that Gelfand’s investigation was not a fair and impartial investigation. Beu was concerned that Alicea was giving him a directive or order that the prosecutor told Beu was unlawful.

On January 25, 2020, Beu emailed Prosecutor Webb-McRae and advises that his IA files are now being requested and the concerns Austino raised and asking for guidance. (R-47D.) Beu had previously forwarded all of Gelfand’s requests for IA files and forwarded Alicea’s directives to him to the prosecutor and indicated to the prosecutor that “The city is again pressuring me to release our IA files to attorney Todd Gelfand for the purpose of their privately conducted internal investigation.” Gelfand was asking for unfettered access to Beu’s IA files. Beu believed Gelfand was seeking unfettered access to the IA files when he wanted to initially be allowed to review the disk that contained all of the department’s IA files for a six-year span. Austino’s complaint alleged that Gelfand had improperly accessed the disc to obtain a copy of the report that he had with him at Austino’s interview. Beu responded to Alicea’s email on January 27, 2020, at 9:09 a.m. (R-48.) Beu indicated that “The release of these files may cause irreparable harm and I would like the opportunity to consult with the county prosecutor and my personal attorney to determine if good cause exists to release these files.” (R-48.) By January 2020, all of Beu’s conversations directly with Gelfand had ceased and were done through his attorney.

Alicea responded to Beu’s email on January 27, 2020, at 2:43 p.m. (R-49.) He stated “You state that the request is more broad than previously requested and seems to

request unfettered access to the IA files.” Alicea asked Beu to explain the basis for Beu’s claim. Alicea further indicated that the January 24, 2020, directive seeks access “as Mr. Gelfand has outlined to you and your counsel several times previously and has been awaiting response. (R-49.) Alicea continues “IA files for which you are a target is the only addition to Gelfand’s list which is attached again.” Alicea attached the list of IA matters Gelfand was seeking. When Beu responded to Alicea on January 27, he never told him that he had gone to the prosecutor’s office and given a statement that there was a complaint that Gelfand improperly accessed the wiretap report. Later the same day on January 27th, Beu emailed Alicea and indicated that he had been in communication with the prosecutor’s office regarding a complaint by Austino. (R-51.) Beu was unsure if he had previously told Alicea about the Austino complaint before Beu wrote this email. Beu advises Alicea in R-51 that “in the present case thus far I have not found that good cause exists.” Beu continues “The reasons for my decision include the following points on which ai am awaiting a decision from the prosecutor’s office, CCPO, in conjunction with the Attorney General’s Office.” Beu cites two bullet points the first being that Gelfand’s investigation is a violation of the IA guidelines and the second that Gelfand has demonstrated a propensity to abuse confidential files. This was a partial list of why he found good cause did not exist. The last directive did not give Beu the option to explain the reasons he was not producing the files, it just orders Beu to release the files to Lieutenant Landi to be delivered to Gelfand. (R-49.) Beu believed he was being ordered to turn over the files but provided his objections anyway.

Alicea responded to Beu’s January 27th email on January 28, 2020, and stated that based on information Beu had now provided, Alicea was withdrawing his last directive at least temporarily to evaluate the information Beu provided. (R-52.) Alicea states “Thank you for finally explaining some basis/reasoning on your part why the issue of the internal affairs files access was not resolved on a timely basis.” (R-52.) As of January 28, 2020, the city was going to be evaluating the information provided by Beu in his January 27, 2020, email and withdrew the directive at least temporarily. Alicea requested that Beu provide him with a copy of the Austino complaint. Alicea indicates in his letter “had you or counsel provided this explanation in response to the numerous requests Mr. Gelfand made or had you otherwise apprised me, or city administration of the concerns set forth in that email late yesterday the whole issue could have been addressed more

cooperatively, and much confusion, miscommunication and misunderstanding could have potentially been avoided.” (R-52.) Beu stated he did not provide that good cause basis earlier because he had told them that good cause did not exist for the release of the files, and he did not think he had to give a specific reason why. Alicea concluded in R-52 “Should you have concern about whether you should legally comply with this order I direct you to immediately advise of the nature of any such concern.” Alicea continued “Compliance with this order is mandatory, but any reason you wish for me to consider if you are hesitant to comply with this order may be taken into account.” Beu said the prosecutor’s office had already advised the city that they were not supposed to be requesting IA files. Beu referenced the September 2019 letter from the prosecutor that stated that any request for IA files from the director is an unlawful order and should not be complied with. (R-152.) There were various orders directing IA files be produced to various individuals - to Gelfand, Casiano Landi – the orders changed a few times.

In R-152, Prosecutor Webb-McRae states to Beu and copies Director Alicea “Accordingly by copy of this letter I am advising Director Alicea to refrain from requesting internal affairs files from anyone other than the chief or myself, if the matter concerns the chief.” On page 2, paragraph 3, “Finally during this investigation it was discovered that Director Alicea requested that Captain Triantos provide a written report outlining the details of the Sheppard internal investigation. Per the policy Director Alicea cannot direct anyone to release information about confidential internal affairs files.” An order to do so would be inappropriate and should not be complied with. This was in regard to the Sheppard investigation. As Chief, Beu answers to the prosecutor. The prosecutor told Alicea that he could not order the release of IA files. Beu believed that Alicea did not have the authority to order him to release the files, but he still answered him and gave him the reasons why. It was not that Beu was ignoring Alicea and telling him that he cannot tell him what to do. That is not what happened here.

The final determination from the prosecutor, after consulting with the AG’s office, was that they should not be asking for Beu’s files, as he does not control them, and they were out of line asking him for that and that request has to go to the prosecutor’s office. As far as the rest is concerned, it was Beu’s call to make, and they should not be threatening Beu with discipline.

July 2019 was the first time Beu recalled discussing the need for files with Gelfand.

R-49 is Alicea's response to Beu's Jan. 27, 2020, email. (R-48.) Beu testified that the list of requested materials attached to Alicea's email was somewhat detailed, but some were vague. With "a little digging," one could figure out what Gelfand was looking for. It would be somewhat easy to find some if not most of the files in this list, but Gelfand did not go into the exact reasons why he was asking for the files in this list. In addition to the IA files, Gelfand was also requesting some non-IA materials, which, as non-IA information, had nothing to do with the IAPP.

Beu acknowledged that his response to Alicea on January 27, 2020, at 8:05 p.m. (R-51) was the first time he had referenced the complaint that he had brought to the prosecutor.

R-53 was Alicea's third directive. This directive expressed that since Beu was the target or involved in some of the IA files that were being requested, the good cause analysis should be assigned to Deputy Chief Pedro Casiano, which Beu disagreed with. This document also directed Beu to immediately forward Alicea a copy of Austino's complaint. He did not know if Austino wanted the complaint to be public or not, and, since Austino had made the complaint with the prosecutor's office, Beu had no paper or document to give Gelfand. When Detective Henry interviewed Beu, he told Beu not to discuss the investigation involving Austino's complaint with anyone outside of the interview.

Alicea issued an updated directive on February 19, 2020. (R-56.) This directive stated that it does not contemplate or require the public release of any IA files. This directive included a revised list of materials deemed necessary for Gelfand's investigation, including some non-IA files. (R-57.) The revised list included a file related to Captain Bowers and Wolf's discipline for the soda fund. Beu did not understand why Gelfand was asking for this file, since Gelfand did not state if he felt the discipline Bowers and Wolf received related to the soda fund was inappropriate or retaliatory. Beu's job was to determine the relevance of the IA files to the employment investigation. Beu testified that Gelfand had to give a reason why he wanted the particular files, and Beu did not see

a complete reason; for some files Gelfand did provide a reason, but not for all. Beu communicated with the prosecutor about this directive, including by forwarding her the directive. Beu acknowledged that in her response letter (R-58B and R-59), Webb-McRae never used the word “illegal” to describe the directives she was addressing.

Alicea sent Beu a letter the next day. (R-60.) In this letter, Alicea acknowledged that Beu had requested the prosecutor intervene and reasserted his previous directives. Beu responded by email and letter. (R-61 and R-63.) The letter was Beu’s itemized response to Alicea’s request for files, including a reference to the prosecutor’s statement that Beu could ask for specific reasons for the production of each file. Beu was directed to look at R-4D and agreed that a lot of the files listed there are the same as those for which he said he needed specific reasons later on. It was not sufficient for Beu that Gelfand had told him that the files were requested as part of his employment investigation. The IA AG guidelines and the prosecutor’s directive state “specific reasoning.” If Gelfand had responded to R-63 and provided specific reasoning, and Beu agreed, Gelfand would have had access to the files, in a controlled environment in the IA for a specific period of time, following the guidelines. It never got that far because Beu was suspended the next day. When Beu wrote “Please advise when you would like to schedule a date and time to review the Internal Affairs files and documents that have already been approved for release,” Beu explained it was because he believed Gelfand had referred to some of them as IA files, even though some of them were not found to be IA files.

Beu did not believe he had ever told anyone at the prosecutor’s office that any investigation into Alicea regarding U-visas was a concern. He testified that to protect the confidentiality of the federal investigation, he was not allowed to discuss it. Nick Tranchitella had told him from the very first meeting, before the article came out, that this investigation was confidential. Beu considered himself bound to this directive to keep the investigation confidential because it came from a fellow law enforcement agency. He was concerned if he did not, it would hinder their investigation.

Beu agreed that as of the time he was testifying, Alicea has not yet been charged with any crime related to this investigation, but that the last time he spoke with the federal investigators, the investigation was still ongoing. Beu acknowledged it had been five

years and that the federal government had had ample time to charge if they were going to do so. Beu felt that by the time he was testifying now, talking about this confidential investigation was not hampering any ongoing investigation because he did not know the specifics of the ongoing part.

Beu did not ever tell Detective Henry, Ron Cuff, or Webb-McRae that he could not comply with a directive because of a confidential matter. The only person he talked to about the federal investigation into Alicea were the two federal agents.

Beu had about five meetings with the federal agents before the raid on the director's residence, including some before the Daily Journal article (P-21) was published on Feb. 18, 2019. Even after the publication of this article, Beu could not tell Alicea he could not release the files for this reason because the investigation into another aspect was ongoing. Beu was not privy as to what that part of the investigation was, but it involved Vineland city employees or elected officials, and the federal agents felt that Alicea could have provided them with additional information in that other matter.

Beu also testified that he met with the federal agents at least two or three times after the article, including at least once in his home some time in 2020 after he had been suspended. He believes the meeting at his house was the last meeting with these agents. All of the meetings with the federal agents were in-person and Beu did not document them. The only place any meeting with the federal agents would have been documented was by his secretary in his meeting agendas, and she may have only documented one or two of these meetings because for some of them, the agents called and just showed up within a moment's notice. Looking at R-215, for the date September 23, 2021, Beu had written "12:15 p.m. spoke with Nick from DHS who again asked questions regarding Director Alicea and confirmed investigation is still opened and ongoing and charges are still possible." Beu had documented this conversation because he felt it pertinent to know that the investigation with Alicea was still ongoing.

Beu agreed that he would probably have no problem complying with a directive from Alicea that had nothing to do with confidential information or that was not police related. In addition to the U-visa issue, other reasons that factored into Beu's reasoning

included: that the prosecutor had told Beu that Alicea did not even have the authority to direct him; whether the investigation itself was permissible; whether the investigation was fair or unbiased; and whether the files Gelfand already had in his possession were misused.

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 (9th Cir. 1963); see In re Polk, 90 N.J. 550 (1982). “The interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony.” State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.) (citation omitted), certif. denied, 10 N.J. 316 (1952). Credibility findings “are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record.” State v. Locurto, 157 N.J. 463 (1999). A fact finder is expected to base decisions on credibility on his or her common sense, intuition, or experience. Barnes v. United States, 412 U.S. 837 (1973). 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). Testimony, to be believed, must not only proceed from the mouth of a credible witness, but must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546, 554–55 (1954).

The charges in this case against Chief Beu involved four subject areas which included the DeMarchi matter, the obstruction/insubordination matter, the Joshua Sheppard matter and the Kimberly Beu matter.

As to the DeMarchi matter, I deem the testimony of the DeMarchi’s to not be credible. If a fact finder is expected to base decisions of credibility on common sense, intuition and experience, I find it not credible that Ron DeMarchi would leave his wife at the bar with Beu, the man who allegedly just propositioned her, while Ron DeMarchi left

the bar and went into the stadium to take his seat. Likewise, I find it not credible that Suzette DeMarchi would stay at the bar with the man who allegedly just propositioned her and did not leave with her husband. That the DeMarchi comments allegedly were made on April 7, 2017, at McFadden's bar before the opening Phillies game, yet no mention of the incident was reported for several months is also suspect. No eyewitnesses support DeMarchis' story and numerous witnesses deny the comments were made or they did not hear any such comments. Testimony from Finley and Adams refute that Beu ever made any sexual references regarding the young daughter during the meeting in Beu's office. Finley was adamant in his testimony that if something like that would have been said he "one million percent" would have objected.

Since Beu was police chief, the law enforcement executive, the IAPP required that the CCPO conduct both a criminal investigation as to any wrongdoing on the part of the chief as well as an investigation into any administrative violations by Beu. Professional, neutral investigators from the CCPO conducted thorough investigations, interviewed all relevant witnesses, considered all relevant evidence, and documented well-supported, logical conclusions clearing Beu of misconduct. All of the prosecutor's witnesses testified credibly and I deem Prosecutor Webb-McRae's testimony most persuasive. The prosecutor's office is highly skilled and trained in conducting these investigations and most importantly, is an impartial neutral party. The fact that the prosecutor's office concluded that there was no wrongdoing on the part of the chief is most persuasive. I deem the prosecutor's office witnesses' testimony, investigations, findings and conclusions entitled to more weight and more persuasive than I am of Gelfand's investigation report and testimony.

The City's theme in this litigation has been that they were obligated to conduct a human resources investigation to protect the city from potential liability once they received the PBA unfiled, unsigned draft civil complaint and hired Gelfand to do so. Meanwhile, Chief Beu and Captain Austino self-reported the PBA draft complaint accusing them of wrongdoing to the prosecutor for the prosecutor's office to conduct an independent investigation as to the allegations contained therein. As the prosecutor's office is charged by law with conducting criminal and administrative investigations regarding the police chief, once the prosecutor's office conducts a thorough professional investigation and

determines no wrongdoing on the part of the chief, it would seem an appropriate and reasonable course of action for the city to acknowledge the independent findings of the prosecutor as to Chief Beu. Although it is understood that the City is not bound by the prosecutor's findings, the fact that the prosecutor's office found no wrongdoing on the part of Chief Beu could only assist the city in defending itself against the allegations raised in the unfiled PBA complaint as to Chief Beu.

Throughout the course of the hearing, it was brought out that Gelfand was not an impartial investigator in that he failed to include documents that were exculpatory to Beu and failed to conduct interviews of persons who would have supported Beu's position. Perhaps the most significant indication that Gelfand was not impartial in this case, was his testimony regarding the Kim Beu charges, and that he had to "lobby" Mr. Benson to get these charges included in the second amended PNDA.

The highly credible testimony from Harris and Bowers was that Kim Beu was placed in juvenile at the request of Sgt. Harris who had the most say in deciding the composition of his unit and who knew Kim Beu from her past work with the PAL. Kim Beu was not Sgt. Harris' first choice as there was another female officer he wanted, Officer McCormick, but she was number one on the sergeants list and his supervisor, Captain Bowers was concerned if she was placed in the unit, once she was promoted, she would be required to go back on patrol and they would lose her from the juvenile unit. Sgt. Harris then requested Kim Beu and Captain Bowers approved Kim Beu's transfer into the juvenile unit because Sgt. Harris wanted her and they needed a female in the unit. Captain Bowers testimony was highly persuasive that she would not do Chief Beu any favors, even if he asked her, which he did not, because of a prior issue between them.

Nevertheless, even after it was clear that Chief Beu did not influence the decision-making process to have his daughter placed in juvenile, Beu was charged with lying to the prosecutor when he said that he had no influence in Kim Beu's being assigned to juvenile, because Chief Beu ultimately signed the order assigning her to juvenile. This charge is particularly concerning since Beu never denied signing the order, but did it as a ministerial act as chief, as in all personnel transfer orders he signed. Beu was never asked in his interview with Cuff whether he signed the order placing Kim Beu in the

juvenile unit and never denied signing the personnel order. A fair and impartial investigator, being presented with these facts, should have declined to charge Beu on this count.

I also deem the testimony of Chief Beu to be credible in his defense of the DeMarchi, Sheppard, and the obstruction/insubordination allegations. Chief Beu denied the DeMarchi allegations and other witnesses denied hearing inappropriate comments or denied inappropriate comments were made at the April 7, 2017, event. Finley and Adams refute that any allegations of improper sexual comments regarding the daughter were made in the August 2017 office meeting with DeMarchi. Chief Beu explained his prior friendly relationship with the DeMarchi family and the time lag between when the alleged comments were made and when they were reported in regard to the promotional list expiring and Ron DeMarchi's obsession with getting promoted as all evincing motive. The Chief's testimony how and why he handled the Sheppard case the way he did was reasonable and certainly within his discretion as police chief. Beu's explanation of being conflicted with the release of the IA files was also credible given the various competing interests with which he had to contend. Beu was concerned that he was being caught in the middle. Adam Austino had filed a grievance objecting to Gelfand's investigation and the release of IA files. Beu wanted to proceed in a manner that was legally justified and followed the guidelines and also wanted to proceed in a manner that protected the rights of employees. Beu sought the prosecutor's guidance on every directive he received from Alicea. Both the chief's association and the prosecutor's office were telling Beu it was his decision to make but emphasized the confidentiality of the files he was entrusted to maintain as the chief was the priority. There was a request for the prosecutor's office to supersede and decide the issue regarding the release of the IA files to provide Beu 'cover'. The prosecutor declined to do so and indicated that there had been no finding of malfeasance on the part of Beu that would require her to supersede the IA function. Repeated warnings were given to the City and Alicea that they could not threaten Beu with discipline for exercising his discretion concerning the release of the IA files. Every directive issued by Alicea to Beu was responded to in a timely manner. Alicea was advised that any requests for the IA files of Chief Beu had to come to the prosecutor, not the chief, yet Alicea kept directing Beu to turn over the files or face insubordination charges.

The prosecutor is charged with overseeing the IA function of the VPD and Chief Beu is obligated to follow the prosecutor's direction concerning IA issues. Tonetta and Benson both acknowledged that Chief Beu had sole discretion concerning the release of IA files.

It is also interesting to note the questionable circumstances surrounding the Sheppard conflict of interest charges and how they arose as there was no "complainant" identified aside from Tonetta's notification to the prosecutor's office that they were advised that the chief had a conflict. The prosecutor requested a copy of the complaint from Tonetta, who forwarded the request to Alicea. Alicea directed Triantos to provide a summary of the IA file to Alicea to provide to the prosecutor's office. Tonetta and Alicea alluded to the fact that it was Triantos who made the complaint of a conflict of interest, but Triantos testified he did not and did not know there had been a complaint against the chief until he received an email from Alicea requesting a summary of his IA investigation when he got back from vacation. Chief Cuff testified that Alicea falsely identified Triantos as the complainant. It is also interesting to note the city did not question the same discipline Chief Beu had given to Officer Rivera for the same offense in the same investigation.

Based upon due consideration of the testimonial, documentary, audio 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 New Jersey Attorney General is the chief law enforcement officer of the State and has promulgated guidelines for the conduct of IA and police disciplinary matters, the Internal Affairs Policy and Procedures (IAPP).

The Cumberland County Prosecutor's Office is the chief law enforcement office in the county of Cumberland and Jennifer Webb-McRae, the County Prosecutor, is the chief law enforcement executive of Cumberland County.

The Cumberland County Prosecutor's Office is tasked with the oversight of the IA 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.

The Professional Standards Unit (PSU) is the IA unit of the prosecutor's office. The unit conducts IA 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. The IAPP requires that when a complaint is made against a police department's law enforcement executive, "all such complaints shall be documented and referred to the county prosecutor for investigation." (J-6 at 15.)

A copy of an undated, unfiled, unsigned, draft civil action complaint on behalf of the Vineland PBA Local 266 was provided to City Solicitor Tonetta together with a demand letter seeking inter alia, the immediate removal of Chief Beu as police chief, as well as money damages in the amount of \$1.5 million. (R-1, P-20.)

Tonetta provided a copy of the draft complaint to Chief Beu, who in turn shared it with Adam Austino. Beu and Austino decided to self-report this complaint to the prosecutor's office for an investigation.

The DeMarchi and Kim Beu matters

On September 6, 2019, Prosecutor Jennifer Webb-McRae directed an investigation into two allegations against Vineland Police Chief Beu identified in an undated, unfiled and unsigned civil action complaint by Attorney Douglas Long on behalf of the Vineland PBA Local 266 that was received in their office from Vineland Police Captain Adam Austino on November 30, 2018. Specifically, she directed that an investigation into the allegations identified in paragraphs 38-41 whereby Chief Beu allegedly provided special treatment to his daughter, Vineland Police Officer Kimberly Beu, and the allegations identified in paragraphs 42-48 whereby Chief Beu allegedly asked to sleep with Ron DeMarchi's wife and daughter in return for a promotion. (R-114.)

By letter, dated December 2, 2019, Prosecutor Jennifer Webb-McRae advised Chief Beu regarding Investigation PSU-19-0203:

Dear Chief Beu:

On September 9, 2019, you received the required Notification of Complaint regarding an investigation by Chief of Staff E. Ronald Cuff Jr. of my Office. The allegations being investigated had the potential of being criminal violations of N.J.S.A. 2C:33-4c Harassment and N.J.S.A. 2C:30-2a Official Misconduct. At this time, the investigation is substantially completed and I have reviewed the investigation. In my best legal opinion, there is insufficient evidence to constitute a violation of N.J.S.A. 2C:30-2a Official Misconduct, and the statute of limitations is expired for any consideration of the violation of N.J.S.A. 2C:33-4c Harassment. Therefore, please consider this a letter of declination, so that the investigation can proceed at the Administrative level. As you are the law enforcement executive of the Vineland Police Department, per the New Jersey Attorney General's Internal Affairs Policy and Procedures, Chief of Staff E. Ronald Cuff Jr. will now proceed with the Administrative Investigation."

(P-2.)

Prosecutor's Office Chief of Staff Ron Cuff conducted an investigation regarding PSU 19-0203, the DeMarchi and Kim Beu allegations. As part of his investigation, he

interviewed Chief Beu on December 18, 2019. The following is a summary taken from the transcript of the interview at R-112 at 149.5 to 181.1 and 185.25 to 192.7:

Cuff informed Beu that a declination letter had been issued, and this was no longer a criminal investigation, but rather an administrative investigation. Pursuant to the Attorney General's policies and procedures, administrative investigations of a law enforcement executive, such as Chief Beu, must be completed by the prosecutor's office.

Beu told Cuff he had attended the Phillies game, drank "minimal" (at most, two drinks), and ran into DeMarchi at the bar area. Beu attended with Tom Riordan and possibly Riordan's brother. Among the crowded bar, there were a bunch of other people from the department there, both civilian and sworn officers. Beu saw DeMarchi when he went to go up to the bar. Tom Riordan and DeMarchi were already at the bar. Up until this point in time, DeMarchi had been constantly harassing Beu about his promotion. At the time in April, DeMarchi was not even up for promotion as he was around number 5 or 6 on the list, and they were going to promote one person at a time. So, DeMarchi did not even have a chance at promotion unless they promoted two people and skipped three to get to him. When DeMarchi asked Beu if he was going to get promoted, Beu told DeMarchi he did not have a say in it, since he was not the appointing authority and the city did not take his opinion as to who they were going to promote. Beu did not have a good working relationship with the mayor or the Director of Public Safety.

That day, Beu approached Tom Riordan at the bar to get the bartender's attention when he saw the DeMarchis a couple people down from Riordan. Beu asked Tom to get the bartender's attention and while he waited, DeMarchi started talking about getting promoted. Even DeMarchi's wife said something about taking care of DeMarchi. Beu repeated that he did not have a say in it, and the conversation lasted maybe a minute. Beu never said anything to DeMarchi that could be remotely construed as wanting to sleep with DeMarchi's wife and he would promote DeMarchi, describing that allegation as "the biggest f---n' lie and crock of sh-t I have ever heard in my life." If he had said that the man, any man at the bar or DeMarchi's wife would have turned around and immediately

objected. Among those who were at the bar within feet of where this conversation allegedly occurred included: Bob DeMarchi, Katherine Rivera (wife of officer Louis Rivera), Tracey Senseman (a hair stylist), a female friend of Rivera's wife, and Gene Sherbin.

Beu questioned why, if Beu had said something like this about DeMarchi's wife, the DeMarchis would have continued contact with him and only raised this issue one month before the sergeant's test was going to expire, two and half to three years later. To Beu, the timing was very suspect, since it all came out when DeMarchi said he thought he was not going to get promoted. It was very obvious to Beu that they wanted him to leave.

Beu did not say in a loud voice that he was going to skip T-Bag and promote DeMarchi. Some people called officer Terry Hall "T." and some called him "T-Bag." Beu called Hall "T." and did not refer to him as "T-Bag." DeMarchi wanted Terry Hall to be skipped and would come into Beu's office to try to give Beu information about Hall to get him skipped, but they were not going to skip Hall and there were other people in front of DeMarchi. It would not make sense for Beu to say he was going to skip Hall when there were three or four other people on the list, too.

There was never a time after the April incident at McFadden's where Ron DeMarchi approached Beu at the police department and told him not to make comments like that about or to his wife.

Between April and August, DeMarchi would come into Beu's office weekly about promotions. In August, Beu remembered a conversation in which DeMarchi came into Beu's office while Finley was there and DeMarchi was crying about promotions and about how he couldn't afford the prep. Finley did most of the talking. Beu's secretary, Adams, could hear everything because the door was open. Then, either at lunch or at the end of the day, they went outside, and DeMarchi's truck was there with his kids inside. Beu did not do anything but say hello. Finley had the conversation about being cheap, and then they left.

Beu never made a statement asking if he could have DeMarchi's daughter if he could not have Suzette. DeMarchi's daughter was ten years old. Beu took offense to the suggestion that he was a pedophile.

Beu also denied that he ever told Rick Tonetta that he had made the comment about DeMarchi's wife. When Tonetta asked Beu questions in his office, that was the first time Beu had ever heard of these allegations. Tonetta never said anything about the comment about the kid—that alleged comment was only piled on six months later. Tonetta told Beu that DeMarchi was a liar and that Tonetta had called DeMarchi out for never having mentioned the comment about his daughter. Beu told Tonetta that he was friendly enough with the DeMarchis, including that they would come to his home, and that his daughter was DeMarchi's daughter's third grade teacher. Beu denied that he ever admitted anything to Tonetta; he had told Tonetta he was friendly enough with the DeMarchis that they could have joked around but he did not say anything like the alleged comment. When Tonetta had called him, Tonetta did not believe DeMarchi's allegations himself. Beu said this was the type of accusation where either you said it or you didn't, and he didn't say it, saying, "You see his wife? Come on." Beu also never asked Suzette DeMarchi what Ronnie's best assets were.

As to the part of the interview regarding the Kim Beu matter, Beu was not assigned to the patrol division when Kim Beu was hired and thus did not control her platoon assignments.

The unwritten Chief's rule began with Tim Codispoti and required that a person have a minimum of three years in the department before special assignments.

When asked whether Beu had any influence on his daughter Kim Beu being placed in the juvenile division, Beu answered that he actually objected to it, because he knew "she would get part of her stones broken." Beu did not even know who the division was considering and did not meddle in it. Beu had told either Shane or Lene that he did not think it was a good idea right now for Kim to be placed there because of how it would look. Beu stepped back from it and that was the end of it, and they ended up putting her

in the division. Shane Harris had asked for her and wanted a female. Beu assumed that Kim met the three-year requirement, or unofficial written Chiefs rule. The only thing he tells people is that he reviews their selection for discipline, in case he has something that the selector is not aware of yet, but that seldom ever comes up. Beu does not say who he wants where. (R-112.)

This concluded the summary of the interview transcribed in R-112 at 149.5 to 181.1 and 185.25 to 192.7.)

Prosecutor's Chief of Staff Ron Cuff conducted the investigation regarding the DeMarchi and Kim Beu allegations and prepared the IA Investigation Report case number PSU-19-0203 dated January 27, 2020, and reviewed by Richard Necelis. (R-114.) This was forwarded to the Prosecutor who concurred with the findings and outcome on February 3, 2020. (R-208.).

In reaching her decision about the DeMarchi matter, Prosecutor Webb-McRae testified she did not even consider it a close call. The first thing was that nobody confirmed that the statements were made, it was he said, she said. Another thing that stuck out with Ms. Webb-McRae was that when DeMarchi was interviewed he said that he was called over by Chief Beu and his wife was already there, and Chief Beu said something sexually derogatory to his wife and that he then walked away and left his wife. In the prosecutor's opinion, she does not think that any man would leave his wife at the scene of where the inappropriate thing was said and then walk away from it. There also was a second incident DeMarchi reported when he went to see Chief Beu in his office and they discussed this all again and that is when DeMarchi claimed Chief Beu made the statement about having DeMarchi's daughter. They interviewed the Chief's secretary, Ms. Adams, regarding the second conversation in the Chief's office and she did not hear anything what DeMarchi was claiming. There were numerous people who said there is joking that goes around with maybe your wife or whatever, but nobody talks about anybody's daughter, and you would have expected somebody's reaction to saying can I have your daughter to be one of disgust, outrage, and immediate attention, and it did not seem like any of that happened. In addition, when others were interviewed about this, she specifically remembered Cardana, they all said DeMarchi was obsessed with getting

this promotion and when Cuff went through the analysis, he was not going to be eligible for the promotion as he was number five on the list and there was no position available at the time. The prosecutor testified that it really resonated with her that DeMarchi told the prosecutor's office that Beu said something derogatory about his wife and then he walked away and left his wife there.

The CCPO investigation into the allegations against Chief Beu providing special treatment to his daughter by placing her in a specialty unit without having the required three years on the job was determined to be unfounded. (R-115.)

Prosecutor Webb-McRae stated in her February 4, 2020, letter to Alicea that Officer Kimberly Beu met the three-year unofficial 'Chief's Rule' requirement prior to being assigned to the juvenile specialty unit as she was appointed as a police officer from the civil service list on March 1, 2015, and was not assigned to the juvenile unit until March 29, 2018. In addition, Sgt. Shane Harris and Captain Lene Bowers sought out Officer Beu for this assignment without Chief Beu's input. The juvenile unit was in need of a female officer and Sgt. Harris specifically wanted Officer Beu in his unit. (P-3, R-115.)

Prosecutor Webb-McRae testified that her general impression was that the chief was not the impetus for his daughter being assigned to juvenile and he was not involved in the process but just signed off on the assignment. Her recollection was that Chief Beu did not have influence over the transfer, that was done by his subordinates and there were specific requests by Sgt. Harris and Captain Bowers. The fact that Captain Bowers wanted Kim Beu in the juvenile unit resonated with the prosecutor as she was aware that Captain Bowers did not care for Chief Beu.

Personnel Order 2018-004, effective April 8, 2018, transferred Kim Beu from unassigned status to the juvenile unit. The order was issued and approved by Chief Beu. LaBoy was also listed as transferred to the juvenile unit. (R-132.)

Chief Beu was never asked in his interview with Cuff of the prosecutor's office if he signed the personnel order transferring his daughter to juvenile.

Ron Cuff testified that he did not believe Chief Beu was untruthful in his interview of him regarding the Kim Beu matter.

The February 4, 2020, letter to Alicea from the prosecutor advised that the City could obtain a copy of the prosecutor's file by contacting Chief of Staff Ron Cuff. (P-3, R-115.) (R-169 at 20.)

Gelfand testified that the City obtained a copy of the prosecutor's file regarding the Kim Beu investigation within a couple of days of receiving the letter dated February 4, 2020. (R-169 at 18.) Alicea also testified that the City obtained the Kim Beu file from the CCPO in February 2020.

Gelfand issued his report on February 25, 2020. (R-168.)

The charges regarding the Kim Beu matter were not added until the second amended PNDA dated June 15, 2020. (J-4.)

Beu was truthful in his interview with Cuff regarding the Kim Beu and DeMarchi matters.

Chief Beu was truthful during his telephone conversation with Gelfand on July 18, 2019, as he did not make the DeMarchi comments and truthfully denied making the comments. Chief Beu was truthful during the December 18, 2019, interview with the prosecutor's office as he did not make the DeMarchi comments and truthfully denied making the DeMarchi comments. During the December 18, 2019, interview with the prosecutor's office Beu truthfully denied referring to Officer T. Hall as "T-Bag" as he did not refer to Terry Hall as "T-Bag", but referred to him as "T."

The prosecutor's investigation (R-114) determined that all these allegations were unfounded. Based on a preponderance of the evidence standard, the complaints were unfounded as witnesses identified in the immediate area either denied hearing the comments or reported the comments were not made. In addition, at the time these

comments were made, Ronald DeMarchi was ranked number five on the sergeant's promotional list, behind Terry Hall, ranked number four and not in the top three to be eligible for promotion, even if Officer Terry Hall was to be bypassed. This was compounded by the fact that there were no open sergeant positions at that time. (P-3, R-115.)

Chief Beu received a February 4, 2020, letter from Sgt. Ron Henry of the Professional Standards Unit (PSU) of the CCPO advising that the PSU completed its investigation into complainants against him concerning his conduct as it relates to his daughter Officer Kim Beu and alleged comments made to Ronald and Suzette DeMarchi. The investigation revealed that the alleged incident was unfounded as witnesses did not support the allegations and as such, the investigation was closed as unfounded. (P-4.)

The Insubordination charges

Beu is charged with never allowing Gelfand access to IA files and other department materials needed to conduct his human resources investigation from June 26, 2019, to the issuance of the charges on April 26, 2021. Beu was also charged with insubordination for failing to comply with orders and directives issued by Public Safety Director Alicea from January through February 2020 to date, requiring Beu to provide access to Gelfand of the files by certain dates or to itemize any objections.

The November 2017 IAPP were the operative guidelines in effect at all relevant times herein. (J-6.) The IAPP requires that all IA records be kept strictly confidential and released by the law enforcement executive only under four specific factual circumstances or upon a showing of good cause. The provision governing the confidentiality of IA files is set forth on page forty-two of J-6 (Section 9.6 in later revisions) provides:

“Confidentiality”

The nature and source of internal allegations, the progress of IA investigations, and the resulting materials are confidential information. The contents of the internal investigation case files shall be retained in the IA unit and clearly marked as confidential.

The information and records of an internal investigation shall only be released under the following limited circumstances:

- If administrative charges have been brought against an officer and a hearing will be held, a copy of all discoverable materials shall be provided to the officer and the hearing officer before the hearing.
- If the subject officer, agency or governing jurisdiction has been named as a defendant in a lawsuit arising out of the specific incident covered by an internal investigation, a copy of the internal investigative reports may be released to the attorney representing the subject officer, agency or jurisdiction.
- Upon the request or at the direction of the county prosecutor or Attorney General.
- Upon a court order.

In addition, the law enforcement executive officer may authorize access to a particular file or record for good cause. The request and the authorization should be in writing, and the written authorization should specify who is being granted access, to which records access is being granted and for what time period access is permitted. The authorization should also specify any conditions (i.e., the files may be reviewed only at the IA office and may not be removed). The law enforcement executive should grant such access sparingly, given the purpose of the internal affairs process and the nature of many of the allegations against officers.” (J-6 at 42, emphasis added.)

It is undisputed that the first four limited reasons for allowing release of IA files do not apply to this case. What is at issue is the fifth provision which allows the chief discretion to authorize access to a file for good cause.

On June 26, 2019, Gelfand first emailed Beu requesting he needed to review IA files for his investigation. (R-3.) On July 16, 2019, Beu emailed Gelfand explaining the procedures he wanted to follow regarding the IA files. (R-4-C.) Gelfand testified that this response was “entirely fair”. Gelfand emailed Beu trying to identify which IA files he

needed to review. (R-4D.) Beu contacted the legal division of the State Association of Police Chiefs to obtain guidance as to what he should do. Beu emailed Ray Hayducka for assistance in determining whether to release the IA files. (R-4DD.) Beu advised Gelfand that he had forwarded the request to the New Jersey State Association of Chiefs of Police for guidance. (R-4E.) On July 17, 2019, Captain Austino filed a grievance from the Venland Police Captain's Association regarding Gelfand's investigation. (R-4F.) Beu advised Gelfand that he agreed with Austino. It was agreed that Gelfand would go to the prosecutor's office for their opinion and to take Beu out of the decision. Gelfand called Howard Shapiro and explained his investigation and how he had asked for certain IA files from Beu who had custody and control of the files. Gelfand followed up with the prosecutor's office in writing on July 29, 2019. (R-7.) In his letter Gelfand indicated that Beu wishes to cooperate and Gelfand had not sensed any bit of obstruction. At this point, Gelfand and Beu agreed to put the IA review issues on hold. Shapiro responded on August 22, 2019, (R-10) stating that the CCPO shall not direct the VPD to release any documents to Gelfand. On September 3, 2019, Gelfand sought clarification and emailed Shapiro back expressing confusion about his letter. (R-11.) On September 17, 2019, Shapiro explained himself further in R-15, stating that the CPO did not seek to get involved in the "labor grievances, cross-complaints, and civil litigation involving the VPCA, the PBA and the City of Vieland Administration." Shapiro also wrote in this letter that "the law enforcement executive officer may authorize access to a particular file or record for good cause."

The September 3, 2019, letter from the prosecutor to Tonetta, exonerating Chief Beu in the Sheppard matter, copying in Alicea and Beu, further indicated that during the investigation it was discovered that Director Alicea requested that Captain Triantos provide a written report outlining the details of the Sheppard internal investigation. The prosecutor indicated that pursuant to the AG Policy and Procedures on IA, Director Alicea cannot direct anyone to release information about confidential IA files. Accordingly, asking for a report about an IA investigation was an inappropriate order and should not have been complied with. Prosecutor Webb-McRae's letter continued that by copy of this letter, she was advising Director Alicea to refrain from requesting IA files from anyone other than the chief or herself. (if the matter concerns the Chief) (R-152.)

Alicea testified that he had been copied on the September 3, 2019, letter to Richard Tonetta from Prosecutor Webb-McRae. (R-152.) Alicea testified that he understood the prosecutor had stated that requests for the chief's IA files had to go to her office, but Alicea disagreed. He testified that the prosecutor had no authority over him. However, Alicea agreed that the prosecutor has authority over the chief of police, including in the administration of the IA process.

Beu also reached out directly to the prosecutor's office via emails, text messages and telephone conversations. He sent a text message to the Prosecutor Jennifer Webb-McRae when he could not get in touch with her on the telephone to discuss the IA files. (R-10A.)

Beu sent an email to the prosecutor questioning the investigation and whether the investigation violated the A.G. guidelines and whether he should or could give the files. (R-47D.) Adam Austino filed a grievance in July opposing the release of the IA files. (R-4F.) Beu was concerned that he was being caught in the middle. He wanted to proceed in a manner that was legally justified and followed the guidelines and also wanted to proceed in a manner that protected the rights of employees. Both the Chief's Association and the prosecutor's office were telling him it was his decision to make but the confidentiality of the files he was entrusted to maintain as the chief was the priority. Austino was very upset and on the verge of legal action.

In January 2020 Beu received the first directive from Public Safety Director Alicea regarding the release of the IA files to Gelfand. (R-47.) Beu was concerned whether Alicea could legally order him to do it and whether or not it violated the IA guidelines and whether or not the investigation was even proper. There were some questions about whether Gelfand's human resource investigation was actually an IA investigation which is not supposed to be conducted by a third party but by the agency or the prosecutor. When Beu received R-47, he believed it conflicted with R-152 and whether or not the director had the authority to tell anybody to release an IA file to him because the prosecutor's office's letter said that he did not. (R-152.) The bold italicized portion in R-47 was directing Beu to produce all of his IA files. According to the prosecutor, the authority to release the Chief's files had to go through her. Beu was directed by Alicea to

respond to his directive by Monday, January 27, 2020, at 10:00 a.m. (R-47.) Beu forwarded this directive to the prosecutor's office because she was his boss. Beu responded to the directive at R-47D. Prior to Beu receiving this directive, the PBA had made complaints, Austino had made complaints to the city and Beu had made complaints to the city regarding the PBA, city administration, the mayor, city solicitor, and the business administrator. Beu requested an extension because he received the directive at the end of the day and was trying to get in touch with attorneys for legal advice and the time constraints were unreasonable. Beu did respond at 9:09 a.m. before the 10:00 a.m. deadline of January 27, 2020. Beu received an email from Director Alicea indicating that the "IA files for which you are the target is the only addition to Mr. Gelfand's list attached here again for your review." (R-49.) Beu had concerns because he did not have the authority to release these files according to the prosecutor. Beu described this as seeking unfettered access to his IA jacket. Alicea wrote in the last paragraph: "Accordingly no additional time will be granted. Continued failure to comply with my directive may as previously advised result in a charge of insubordination. Copies of the files, records, must be released immediately to Lieutenant Landi to be delivered to Mr. Gelfand." He understood Alicea to be telling him to release the files without any guidelines or specifics and just to release the files. Beu believed this conflicted with what the prosecutor had said in R-152.

Beu forwarded Alicea's email to Jennifer Webb- McRae for her review and legal advice. (R-49A.) Beu responded via email at 8:05 p.m. to Alicea's email stating he "elected to wait until 2:43 p.m. to reply, deny my request and demand an immediate explanation and response on some point fully knowing that I secured at 2:30". (R-51.) Beu explained that Alicea knew he finished work at 2:30, so Beu had to go back on that day to respond. He did advise Alicea that he reached out to the prosecutor's office for guidance. Beu indicated in this email that he had not found good cause to release the files. (R-51 at 2.) Alicea's original directive in R-47 stated "None of those guidelines appear to preclude the requests for Mr. Gelfand to review internal affairs materials for this purpose. Should you disagree however this directive only requires the itemized reason for denying Mr. Gelfand access to any materials on the attached list. I ask that any materials which you are inclined to object for Mr. Gelfand reviewing you are directed to fairly and reasonably state the basis for objection in writing." Beu believed he was

responding to the directive on January 27, 2020, when he sent R-51 to Alicea. He responded by the time given and indicated the reasons why he felt good cause did not exist and was not releasing the files.

Beu received another director from Alicea to release the files stating that the AG's IA guidelines do not apply to the city's HR investigations and purporting to disqualify Beu. (R-53.) Beu was concerned as he did not think the director had the authority to disqualify Beu based on correspondence he had with the prosecutor's office and the AG's guidelines. Just because Alicea did not like the answer he received from Beu, he could not disqualify him. If Beu was disqualified, Deputy Chief Casiano would have been in charge, and he was the subject of one of the IA files being sought in the B.B. improper strip search case. (R-57, item 1F.)

A January 31, 2020, letter was sent from Mike Benson to First Assistant Prosecutor Harold Shapiro, copying in Beu. It was Beu's understanding that the city had been told they could not seek Beu's files and that the files for other officers were under Beu's discretion. (R-55.) While this was going on Austino was continuing to object to Gelfand getting access to IA files and his entire investigation. Austino sent an email to the prosecutor's office with a subject matter "Gelfand sham witch hunt investigation and his use of an illegally and unethically obtained criminal investigation report." Ron Henry from the prosecutor's office responded to the email on February 6, 2020. (R-55D.) Beu was copied in on the emails, and he considered this when he was deciding what to do.

Director Alicea issued a third directive to Beu with a February 21, 2020, deadline. In Beu's mind nothing had changed between the time the first two directives had been issued that would alter his prior good cause analysis. (R-56.) This directive also gave Beu the option of providing a written explanation if he was not going to release the files.

A letter from Prosecutor Webb-McRae to Alicea was sent before Beu had the opportunity to respond to the third directive. (R-58.) In that letter she advises that she is going to have a more formal response as she was going to get guidance from the AG's office. It was Beu's understanding that he was not to take any action until that happened.

The prosecutor sent Beu a letter dated February 23, 2020, advising Beu regarding what he should do with respect to the IA files. Basically, she indicated that the request for Beu's files had to go through her and that Beu was to do a good cause analysis for the release of other officer's IA files. She reiterated that he had to maintain confidentiality of the IA files. She stated that the city is free to hire anyone it desires to conduct any investigation except law enforcement IA investigations. The prosecutor stressed "the internal affairs process is one that encourages confidentiality even permitting anonymous complaints so that individuals participate fully truthfully to assure the public confidence in the fact that law enforcement can and will govern itself. This section specifically guides the chief to grant such access to internal affairs files sparingly given the purpose of the internal affairs process and the nature of the any allegations against officers." (R-59 at 6.) The prosecutor also reminded the city that they should stop threatening discipline to gain access to the files and that if discipline was to be taken against him, he would be in the right for making a good cause analysis. (R-59.) Beu also had a text message exchange on February 24, 2020, with the prosecutor about this same subject. (R-60A.) Beu sent her a copy of the February 24, 2020, directive (R-60) he had received which was contradictory to her directions and advised that they were threatening him with discipline. She told him that the city was out of line for threatening him with discipline and "you will win that eventually. You just need to decide." She also indicated that "If you don't believe they should get the files you should stand firm." (R-60A.) The February 24, 2020, directive only directed him to turn over the files and did not give an option to provide a written response. He believed this conflicted with the prosecutor's letter of February 23, 2020. (R-59.) In her letter, she advised Beu could set parameters. He could make a good cause analysis, deny or not deny and should not be threatened with discipline.

The deadline given in the February 24, 2020, directive was 9:00 a.m. on February 25, 2020. Beu did respond on February 25, 2020, at 8:58 a.m., before the deadline. He advised Alicea that he thought his directive conflicted with the prosecutor's letter and explained his reasoning and areas of concern with releasing the IA files. He addressed the conflict issue which the prosecutor's office would not weigh in on. He also addressed the issue that the individual they wanted Beu to defer to, Pedro Casiano, had a conflict. He also addressed that they should not be threatening discipline against him. He highlighted guarding the confidentiality of the IA files. (R-61.) Beu raised two additional

items of concern that factored into his good cause analysis. That was that Gelfand's representation of the city of Vineland was a conflict and that the CCPO may proceed to conduct a criminal investigation into Austino's allegations that Gelfand illegally accessed and used information in IA files he obtained regarding the wiretap investigation. (R-61 at 2.)

CCPO Detective Ron Henry had previously authorized the release of the Austino wiretap file to Tonetta on June 15, 2017, for the defense of the Austino CEPA complaint. (R-204.) Austino complained to the prosecutor's office regarding Gelfand's possession of the file. (R-84.) Henry was assigned to investigate Austino's complaint and candidly admitted that he had no recollection of his previous email authorizing the release of the file to Tonetta. Beu was not copied in the email that authorized the release of the single file to Tonetta, not Gelfand and did not demonstrate that Beu knew that Gelfand was entitled to the IA files. (R-204.)

Beu did authorize Gelfand to review certain documents on his list. Beu broke down the list and responded to each item. As to section 1, item A, he granted access and set parameters. Section 2 on the list were not considered IA files, and they were ready for Gelfand's review upon his contacting Beu to make arrangements to receive them. (R-61 and R-63.)

Beu testified that at no point was he not releasing IA files in order to hide information that he did not want released. He did not think there was anything in there that was improper. He wanted to release his own files but was told he could not. He had nothing to hide. He just did not give them everything because it would have violated the confidentiality of the IA files. He went back and forth in his mind repeatedly and made the decision at the end that he just did not think that they had good cause for the reasons they gave. They did not give legitimate reasons. Beu did not think good cause existed, so he finally made the decision, and he knew that they were going to come after him, which they did. He was suspended the next day on February 26, 2020.

On March 12, 2020, the prosecutor's office superseded the VPD IA function. (R-68.)

On May 22, 2020, Harold Shapiro of the CCPO authorized the release of the IA files (R-83), subject to limited use, following receipt of a memorandum in support of the release of the IA files from Mike Benson and an affirmation from Gelfand. (R-71 – R-75.)

Joshua Sheppard matter

Beu is charged with having a direct relationship conflict of interest in his intercession with the disciplinary action originally proposed against Officer Joshua Sheppard, with that intercession resulting in a reduced disciplinary penalty for Officer Sheppard.

Josh Sheppard is Beu's daughter Kimberly's boyfriend and the father of his granddaughter. Kim Beu was a Vineland Police officer but no longer is a police officer. Josh Sheppard was also a Vineland police officer but no longer is a police officer. They were never married and still are not married. They did not live with Beu.

The underlying incident that led to the disciplinary action against Sheppard was that Sheppard and Alessandra Rivera and other police officers were handling a call and there was going to be a report need to be taken and possibly an arrest and then there was a warrant arrest taking place at the scene of the same call. Sgt. Shaw was in the station in the sergeant/lieutenant's office and spoke with Sheppard and expressed that he did not want too many people tied up on the call and wanted one person to handle everything. Sheppard's account was that he wanted one person to make the warrant arrest and one person to handle the other part of the call and the rest of the officers on the scene to clear. Sheppard did the warrant arrest and Rivera did the other part of the call. Words were exchanged at the station and Rivera apparently got loud with Sgt. Shaw and there was allegedly some shouting and door slamming by Rivera. Sheppard was chastised for being in the station and handling the call and then Shaw wrote them both up for insubordination. Sgt. Shaw filed a Critical Incident report dated November 17, 2017, regarding Shepard and Rivera (R-143). Beu was not aware of the filing of the critical incident report at the time it was filed and normally would not be made aware of it until it made its way up to him upon the completion of the IA investigation. The only time

he would be advised of something from the get-go would be if there is something criminal involving an officer and he would be notified right away if it required an immediate suspension.

Steven Triantos was assigned to conduct the IA investigation and prepared an investigation report dated September 10, 2018. (R-144.) Based on his investigation, Triantos recommended sustaining multiple policy violations against Sheppard including insubordination, failure to submit a report by end of shift, failure to separate male and female prisoners in custody, and failure to maintain consistent supervision over arrestees. Triantos' report did not recommend discipline for either officer as it was the Chief's purview to decide the appropriate discipline.

When the report was completed, Beu reviewed the report and met with Triantos to discuss the report. Beu sustained all of the charges (R-144). Triantos did not recommend any discipline to be imposed in his report. Beu's decision on the penalty to be imposed on Shepard and Rivera was that Sheppard received verbal counselling and retraining because of some safety issues involved and Rivera was also given verbal counselling. When he told Triantos he was issuing verbal counselling, Triantos did not object or complain about the level of discipline. Triantos' report did not make any recommendation for discipline and the only recommendations in his report were for what charges he felt should be sustained or not sustained. Verbal counseling is a low level of discipline. Beu decided that was appropriate with regards to Sheppard because Sheppard gave a completely different account of the incident than Sgt. Shaw did. He said Shaw told him that two people to take care of the call, one officer for the burglary and one officer for the warrant, then the officers to clear. Shaw's account was that he wanted one officer to handle everything. When they spoke to other officers present in the sergeant/lieutenant's office at the time, they could not substantiate that Shaw said he wanted two people to do the call or one person to do the call. Sheppard had said that the call was hectic. Rivera said there were a lot of people there and that it was loud and done over the telephone. Beu looked at it as a miscommunication more than an insubordination but wanted to err on the side of the supervisor, so he did sustain it, but issued a minor level of discipline. The same went for Rivera, that when they talked with the other supervisors in the lieutenant's office at the time, they minimized the incident with the

alleged door slamming and shouting. Insubordination is a serious charge and if an order is given and the officer blatantly refuses to obey a direct order, that is insubordination. Confusion, and not getting it done the way it was supposed to be done is a different level from Beu's perspective.

Sheppard's relationship with his daughter did not impact on Beu's decision to sustain the discipline or the level of discipline that he imposed. The director questioned it but never questioned the level of discipline imposed on the other officer involved in the call. Alicea never explained to Beu how the other officers knew about the outcome of the IA investigation. Alicea alleged that the complaint came from Triantos.

Beu had never received any complaints from anyone that the discipline he imposed on someone was too light. The PBA never complained that he imposed too little discipline on someone.

Beu learned many months later that the CCPO had opened an investigation into his handling of the Shepard matter. The Shepard IA investigation report was completed by Triantos September 10, 2018, and submitted to Beu. Chief Beu decided both officers would be issued verbal counselling. Lt. Triantos issued the verbal counselling to Officer Rivera on September 11, 2018, and issued the verbal counselling to Officer Sheppard on September 14, 2018. (R-207.)

On June 19, 2019, City Solicitor Tonetta made an allegation to Trial Chief Carl Cavagnaro that VPD Police Chief Beu was involved in a matter in which he had a conflict of interest. Prosecutor Webb-McRae requested Tonetta transmit the name and contact information for the complainant, along with any supporting material to Chief of Staff Ronald E. Cuff for investigation. Not receiving any information from Tonetta, Cuff advised the prosecutor that he has not received any of the requested information and she followed up with Tonetta. Tonetta reported that Public Safety Director Edwin Alicea would be forwarding the paperwork shortly. Director Alicea confirmed this information reporting "I received an email this morning from the officer who brought this to our attention. He informed me that he just got my request for a report of the allegations. He just got back from vacation. I will forward his documents as soon as I receive them."

On June 28, 2019, Alicea delivered the reported complaint to Cuff in his office and advised Cuff that the case involved a sustained charge of insubordination against Officer Sheppard. Alicea advised that he believed it was a conflict-of-interest case and Beu should have deferred the discipline decision to him, as Officer Sheppard is the boyfriend of Officer Kimberly Beu, and they have a child in common, and Officer Kimberly Beu is Chief Beu's daughter. (R-207.) After Alicea left, Cuff returned to his office and reviewed the reported complaint. It was a four-page document authored by Captain Steven Triantos to Director Edwin Alicea, dated June 28, 2019, and the subject line was "Officer Sheppard's Internal Affairs Investigation Summary." A review of the document revealed it was a summary of an internal investigation conducted by Captain Triantos in November 2017 involving Officer Sheppard. Captain Triantos did not identify a complaint or report a possible conflict in his document.

As part of his investigation, Cuff contacted Triantos on July 18, 2019. Captain Triantos stated that he never made a complaint to Director Alicea or anyone about Chief Beu having a conflict of interest and did not know a complaint was made until he returned from vacation approximately one and a half weeks ago, when he received an email from Director Alicea to provide a summary of the investigation which he did. (R-207.)

By letter, dated September 3, 2019, Prosecutor Webb-McRae advised Mr. Tonetta that they had concluded their investigation into the allegations of Beu's Misuse or Abuse of Authority as to the Sheppard matter. (R-152.) The prosecutor's office exonerated Chief Beu. They found that there was no actual conflict based upon a review of the department policy. A review of ten files (from 2017 to present where allegations of insubordination were sustained against various officers) revealed that discipline ranged the gamut of counseling, performance notices and written reprimands. The discipline issued to Officer Sheppard was within the appropriate realm of discipline for the nature of the infraction and his disciplinary history. Chief Beu is the Law Enforcement Executive for the Police Department and is therefore, per New Jersey AG IAPP, the appropriate authority to issue discipline. (R-152.) That being said, as the Chief Law Enforcement Officer, the prosecutor advised Chief Beu that he should be mindful of Conflicts of Interest or the appearance of a Conflict of Interest when performing his duties. Accordingly, she

advised Chief Beu that in the case of an actual conflict (or the appearance of a conflict), it would behoove the Chief to recuse himself and permit the next highest-ranking officer to decide culpability as well as mete out discipline. Doing so protects both the Chief and the agency. The prosecutor indicated in her letter that she counseled Chief Beu in this regard. (R-152.)

Beu never showed favoritism to Sheppard. He has put in for assignments throughout his career that he did not get specifically because he was not the best candidate. Beu was not aware of any city policy he was violating by rendering any disciplinary conclusion in the Sheppard IA matter. No one from the city administration ever told him that he was violating any city policy by handling discipline matters involving Sheppard – not Tonetta, not Dickinson and not Alicea.

The general order on fraternization and relationships from the VPD, GO 2015-10, was promulgated by Beu's predecessor, Chief Codispoti. (R-164.) Beu has not had a personal relationship with Josh Sheppard as said term is defined in the policy. He has not had a romantic relationship with Josh Sheppard as defined by general order 2015-010.

A member of the immediate family shall be defined as the spouse or dependent child of a local government officer residing in the same household. (R-166.) Josh Sheppard was never Beu's spouse, a dependent child or lived in the same household as Beu. The prosecutor's office concluded at the end of their investigation into this matter on September 3, 2019, that Beu was exonerated, which under the IAPP means the incident occurred but there was no violation. (R-152.) The report mentioned Beu not being required to but possibly recusing himself in the future. Beu testified that he never knew that was permissible as the chief of police and called the prosecutor and spoke with her about that. He thought as the chief of police he had to make a decision and did not know he could pass it to somebody else. Prior police chiefs had children that were police officers, and he did not recall them recusing themselves for anything.

The September 3, 2019, letter from the prosecutor to Tonetta, copying in Alicea and Beu, further indicated that during the investigation it was discovered that Director

Alicea requested that Captain Triantos provide a written report outlining the details of the Sheppard internal investigation. The prosecutor stated that pursuant to the Attorney General Policy and Procedures on Internal Affairs, Director Alicea cannot direct anyone to release information about confidential IA files. Accordingly, asking for a report about an IA investigation was an inappropriate order and should not have been complied with. (R-152.)

Chief Beu was exonerated in the Sheppard matter, Misuse or Abuse of Authority, PSU-19-0150. (R-207.)

Chief Cuff went on to state that based on his thirty-nine years' experience and being nationally certified in IA investigations, he would not have sustained the complaint of insubordination against Officer Sheppard as there was no evidence to support Sgt. Shaw's claim. (R-207.)

Following his receipt of Prosecutor Webb-McRae's letter exonerating Chief Beu in the Sheppard matter, Tonetta objected to her findings and requested the prosecutor to reconsider her decision. (R-153 -156.) When she did not, Tonetta appealed to the Attorney General's Office requesting that they review this matter. (R-157.) The request was declined as it was discretionary with the prosecutor's office, and unless there was an abuse of discretion, there was no reason for the AG's office to get involved.

Alicea charged Beu with a 3:1.1 Performance of Duty, rules and regulations violation in connection with the Sheppard matter. The prosecutor's letter was dated September 3, 2019, advising Tonetta that Beu was exonerated. The charges were not filed against Beu in the Sheppard matter until February 26, 2020.

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 suspended 180 days and demoted to Deputy Chief pursuant to a FNDA dated April 26, 2021, for violations of N.J.A.C. 4A:2-2.3(a)1-Incompetency, inefficiency or failure to perform duties; N.J.A.C. 4A:2-2.3(a)2-Insubordination; N.J.A.C. 4A:2-2.3(a)6- Conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)7-Neglect of duty; N.J.A.C. 4A:2-2.3(a)11-Other sufficient cause; and General Order 2018-002 Rules and Regulations: 3.1 General Conduct – (3.1.1 - Performance of Duty; 3.1.2 – Action Off-Duty; 3.1.3 -Obedience to Laws, Ordinances, Rules and Written Directives; 3.1.6 – Insubordination; 3:1.7 – Providing False Information; 3:1.8 – Conduct Toward Other Department Employees; 3:13.5 – Truthfulness; 4.2 Department Authority to Discipline – (4:2.1 – Discipline Authority; 1. Under the provision of N.J.A.C. 4A:2-2.3, employees, regardless of rank, shall be subject to disciplinary action for: a. Incompetency, inefficiency or failure to perform duties; b. Insubordination; f. Conduct unbecoming a public employee; g. Neglect of duty); and Violation of N.J.S.A. 40A:14-147 – Truthfulness/Misconduct. (J-1).

Under N.J.A.C. 4A:2-2.3(a)(1), Incompetency, inefficiency or failure to perform duties, an employee may be subjected to major discipline for “incompetency, inefficiency, or failure to perform duties.” In general, incompetence, inefficiency, or failure to perform duties exists where the employee’s conduct demonstrates an unwillingness or inability to meet, obtain or produce effects or results necessary for adequate performance. Clark v. New Jersey Dep’t of Agric., 1 N.J.A.R. 315 (1980).

Pursuant to N.J.A.C. 4A:2-2.3(a)2-Insubordination, an employee may be subject to major discipline for insubordination. Black's Law Dictionary 802 (7th Ed. 1999) defines insubordination as a "willful disregard of an employer's instructions" or an "act of disobedience to proper authority." Webster's II New College Dictionary (1995) defines insubordination as "not submissive to authority: disobedient." Such dictionary definitions have been utilized by courts to define the term where it is not specifically defined in contract or regulation.

While the regulation does not define "insubordination", New Jersey courts have interpreted it to mean failure to comply with a superior's lawful order. See In re Williams, 443 N.J. Super. 532, 548 n4 (App. Div. 2016) (holding insubordination is "defined as a failure to obey a lawful order"); Rivell v. Civ. Serv. Comm'n, 115 N.J. Super. 64, 69 (App. Div. 1971) (explaining order at issue must be lawful). Thus, where the order in question is not lawful, it cannot be the basis for an insubordination charge. Id., (reversing Civil Service Commission insubordination finding because the order to employee to submit a psychological fitness for duty evaluation violated the Americans with Disabilities Act and was therefore unlawful).

Pursuant to N.J.A.C. 4A:2-2.3(a)6, an employee may be subject to major discipline for Conduct unbecoming a public employee. "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 chief 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).

Under N.J.A.C. 4A:2-2.3(a)7, an employee may be subject to major discipline for Neglect of duty. Like N.J.A.C. 4A:2-2.3(a)(1), a finding of neglect under N.J.A.C. 4A:2-2.3(a)(7) requires more than a simple error by the public employee and instead focuses on egregious misconduct. See e.g. Carter, 191 N.J. at 481 (upholding decision that police officer violated N.J.A.C. 4A:2-2.3(a)(7) by sleeping on duty); In re Restrepo, 449 N.J. Super. 409, 425-26 (App. Div. 2017) (correctional officer's unauthorized absence from post for over an hour, during which time an inmate fight occurred, constituted neglect of duty); In re: Warren, 117 N.J. 295 (1989) (holding that corrections officer than failed to conduct a head count, allowing 4 inmates to escape, and then falsified a report to cover up his failure, neglected his duty).

Pursuant to N.J.A.C. 4A:2-2.3(a)11, an employee may be subject to discipline for “Other sufficient cause”. Other sufficient cause is a catch-all phrase for 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.

Respondent has also charged Beu with various violations of the VPD Rules and Regulations including: General Order 2018-002 Rules and Regulations: 3.1 General Conduct – (3.1.1 - Performance of Duty; 3.1.2 – Action Off-Duty; 3.1.3 -Obedience to Laws, Ordinances, Rules and Written Directives; 3.1.6 – Insubordination; 3:1.7 – Providing False Information; 3:1.8 – Conduct Toward Other Department Employees; 3:13.5 – Truthfulness; 4.2 Department Authority to Discipline – (4:2.1 – Discipline Authority; 1. Under the provision of N.J.A.C. 4A:2-2.3, employees, regardless of rank, shall be subject to disciplinary action

for: a. Incompetency, inefficiency or failure to perform duties; b. Insubordination; f. Conduct unbecoming a public employee; g. Neglect of duty); and a Violation of N.J.S.A. 40A:14-147 – Truthfulness/Misconduct. (J-1).

The four incidents giving rise to the charges are set forth in Schedule A of the FNDA and have been identified as the DeMarchi matter, the Insubordination matter, the Joshua Sheppard matter and the Kim Beu matter.

DeMarchi charges

The charges regarding the DeMarchi matter state:

“During April 2017, while at a bar in advance of attending a Philadelphia Phillies game, Vineland Police Officer Ronald DeMarchi had conversation with Chief Beu concerning promotions from a civil service list for sergeants’ promotions. Chief Beu commented to the effect that he was going to promote or thinking of promoting “T-Bag,” referring to Officer T. Hall who was one spot ahead of DeMarchi on the civil service list for promotion to sergeant. Chief Beu then made a comment to Ronald DeMarchi in the presence of, and heard by Ronald DeMarchi’s wife Suzette DeMarchi, suggesting that Beu would seek to get DeMarchi promoted to Sergeant “if [Chief Beu] could have DeMarchi’s wife, Suzette,” referring to DeMarchi allowing Beu to have sex with DeMarchi’s wife, Suzette. Chief Beu again made a comment to Ronald DeMarchi, in or about the end of August or beginning of September 2017, to the same effect, i.e., that Beu would try to get DeMarchi promoted if Beu could have DeMarchi’s wife Suzette. When DeMarchi did not react well to that comment, Chief Beu made a comment along the lines of “how about Brooke,” referring to DeMarchi’s pre-teen daughter.

On July 18, 2019, during telephone conversation with Todd J. Gelfand, Esquire, whom Chief Beu knew to have been assigned by the City of Vineland as special counsel to investigate complaints of retaliation made to city administration to include the DeMarchi comments, Chief Beu untruthfully denied having made either comment. Again, on December 18, 2019, when interviewed by the Cumberland County Prosecutor’s office, Chief Beu untruthfully denied having made “the DeMarchi comments.” During the December 18, 2019, interview, Chief Beu also untruthfully

denied ever having referred to Officer T. Hall by the nickname "T-Bag," a term that is a highly offensive and profane sexual reference.

Ron DeMarchi and Suzette DeMarchi testified that Beu made inappropriate comments at the Phillies game on April 7, 2017. Beu, Thomas Riordan and William Riordan were all present at the time and denied Beu made those comments. Ron DeMarchi also claims Beu made inappropriate comments during a meeting in Beu's office in August or September 2017. Beu, former Captain Matt Finely, and Beu's former secretary, Stephanie Adams, were all present and deny that Beu made those comments.

As set forth in the findings of facts, following a thorough investigation by Chief Cuff (R-114) the prosecutor concluded that the DeMarchi allegations were unfounded as the preponderance of evidence indicated that it was more likely that these allegations did not occur, than they did, therefore, the appropriate administrative conclusion was "Unfounded". (R-208.) In reaching her decision about the DeMarchi matter, Prosecutor Webb-McRae testified that she did not even consider it a close call. The first thing was that nobody confirmed that the statements were made, it was he said, she said. Another thing that stuck out with Prosecutor Webb-McRae was that when DeMarchi was interviewed he said that he was called over by Chief Beu and his wife was already there, and Chief Beu said something sexually derogatory to his wife and that he then walked away and left his wife. In the prosecutor's opinion, she does not think that any man would leave his wife at the scene of where the inappropriate thing was said and then walk away from it. There also was a second incident DeMarchi reported when he went to see Chief Beu in his office and they discussed this all again and that is when DeMarchi claimed Chief Beu made the statement about having DeMarchi's daughter. They interviewed the Chief's secretary, Ms. Adams, regarding the second conversation in the Chief's office and she did not hear anything what DeMarchi was claiming. In addition, when others were interviewed about this, Prosecutor Webb-McRae testified she specifically remembered they all said DeMarchi was obsessed with getting this promotion and when Cuff went through the analysis, he was not going to be eligible for the promotion as he was number five on the list and there was no position available at the time. The prosecutor testified that it really resonated with her that DeMarchi told the prosecutor's office that Beu said something derogatory about his wife and then he walked away and left his wife there.

As set forth in the findings of facts, Chief Beu was truthful during his telephone conversation with Gelfand on July 18, 2019, as he did not make the DeMarchi comments and truthfully denied making the comments. Chief Beu was truthful during the December 18, 2019, interview with the prosecutor's office as he did not make the DeMarchi comments and truthfully denied making the DeMarchi comments. During the December 18, 2019, interview with the prosecutor's office Beu truthfully denied referring to Officer T. Hall as "T-Bag" as he did not refer to Terry Hall as "T-Bag", but referred to him as "T."

Based on the above, I **CONCLUDE** that respondent has failed to prove the allegations against Beu as to the DeMarchi charges as set forth in Schedule A of the FNDA by a preponderance of the credible evidence.

Obstruction/Insubordination charges

Starting on or about June 26, 2019, Special Counsel Gelfand advised Chief Beu that for purposes of performing the City of Vineland investigation into certain human resource complaints of retaliation and harassment, to include complaints by the Police Benevolent Association (PBA) Local 266 as well as complaints by Captain Adam Austino, Special Counsel Gelfand needed to review relevant Vineland Police Department Internal Affairs (VPD IA) files and other police department materials. From June 26, 2019, through and including the date of the issuance of these charges, Chief Beu never allowed for Special Counsel Gelfand to have access to the VPD IA files and other non-internal affairs materials for review. Chief Beu insubordinately did not comply with orders and directives issued by Public Safety Director Alicea, requiring Chief Beu to provide access to Special Counsel Gelfand the files by certain dates, or to itemize any objections and explain the basis, in response to written orders and directives by Public Safety Director Alicea throughout January and February 2020 to date.

Although the FNDA states that "From June 26, 2019, through and including the date of the issuance of these charges Chief Beu never allowed for Special Counsel Gelfand to have access to the VPDIA files and other non-internal affairs materials for review" (J-1) that is not accurate. Beu authorized access to documents listed under Gelfand's IA list and also released non-internal affairs documents. (R-61 at 2.)

The FNDA further states that “Chief Beu insubordinately did not comply with the order and directives issued by Director Alicea requiring Chief Beu to provide access to Special Counsel Gelfand for files by date certain or to itemize any objections and explain the basis in response to written orders and directives by Director Alicea throughout January and February 2020 to date.” (J-1.) This is also not accurate as Beu responded to Alicea within the time frames provided on every single directive and provided written statements of the reasons why he was or was not granting access. Beu’s conduct was not insubordinate as he was following instructions given by the Cumberland County Prosecutor.

As set forth in the findings of facts, there were numerous discussions and emails between Beu and Gelfand, Gelfand and the prosecutor’s office, and the prosecutor’s office, city administration and Beu regarding the release of the IA files. Gelfand wrote to First Assistant Prosecutor, Harold Shapiro on July 29, 2019, and asked if the prosecutor’s office has a position to convey or directive to give on the issue of whether the City’s HR investigation is sufficient justification to allow Gelfand to review IA files as necessary for a thorough investigation. (R-8.)

By letter, dated August 22, 2019, Mr. Shapiro responded to Mr. Gelfand and stated: “By way of response to your July 29, 2019 correspondence, the Cumberland County Prosecutor’s Office shall not direct the Vineland Police Department to release any documents to you. (Please see in this regard excerpt from New Jersey IAPP, at page 42). If you have any questions concerning the above, please feel free to contact me.” (R-10.)

By letter, dated September 17, 2019, Shapiro wrote to Gelfand that the AG IA Policy permits Chief Beu, in his discretion, to authorize access to IA files. (R-15.)

By letter, dated September 3, 2019, to Tonetta and copying in Director Edwin Alicea and Beu, regarding the Sheppard investigation, Prosecutor Jennifer Webb-McRae stated that “Director Alicea cannot direct anyone to release information about confidential internal affairs files. Accordingly, asking for a report about an internal affairs investigation

was an inappropriate order and should not have been complied with.” She notes in her letter that the law enforcement executive officer may authorize access to a particular file or record for good cause. The prosecutor’s letter further states “Accordingly, by copy of this letter, I am advising Director Alicea to refrain from requesting Internal Affairs files from anyone other than the chief or myself (if the matter concerns the Chief) in all future matters that do not fall under one of the provisions for release outlined above.” (R-152.)

Alicea testified that he did receive this letter and understood that the prosecutor stated requests for the chief’s IA files had to go to the prosecutor’s office, but said the prosecutor had no authority over him. However, Alicea did acknowledge that the prosecutor has authority over the chief of police, and she does have authority over the chief of police in the administration of the IA process.

Director Alicea issued a series of directives to Beu concerning producing the IA files that Gelfand had been requesting. (R-47, R-49, R-56 and R-60.) The directives were to be considered mandatory, and a charge of insubordination may result if Beu did not comply with the requests. The first directive of January 24, 2020, also included the additional request for all of Beu’s IA files. (R-47.) Alicea conceded that this directive conflicted with the CCPO’s direction in R-152 that requests for the chief’s files had to go to the prosecutor’s office. The Prosecutor herself testified that Alicea’s directive conflicted with her directive with respect to Beu’s own IA files.

On January 27, 2021, Beu responded to Alicea that thus far, he has not found that good cause exists to release the IA files and sets forth his reasoning. (R-51.) Alicea admitted that Beu complied with that directive and withdrew same. (R-52.) On January 29, 2020, Alicea issued another directive purporting to disqualify Beu from acting as the law enforcement executive for purposes of deciding to release certain IA files and instead stating that Deputy Chief Casiano make the decision because he was not a target in any of the underlying IA investigations. (R-53.) Alicea conceded that this directive and his attempt to disqualify Beu conflicted with the prosecutor’s directive in R-152. Furthermore, Casiano was the subject of one of the IA files sought by Gelfand in the B.B. case.

By letter, dated January 31, 2020, from Michael Benson, Associate City Solicitor to First Assistant Prosecutor Shapiro, Mr. Benson confirmed that “we will advise special counsel and City administration that Chief Beu’s IA files, i.e., those in which Chief Beu is the target or prior allegations, should not be the subject of further request for review by special counsel, as your office’s fact-finding in such cases is to be exclusive. As to administrative matters in which the target is not the chief of police but some other police officer or member of the force, your office has declined to make a determination as to whether the City’s request for access to other officers’ IA files can be reviewed by Special Counsel for purposes of investigating alleged violations of the City’s internal discrimination, harassment and retaliation policies. As to those cases, your office has not prohibited and is not prohibiting the Police Chief from allowing access to IA files for that purpose. Your office leaves that decision to the Chief of Police to evaluate under the applicable guidelines.” (R-55.)

Beu provided the prosecutor with copies of all of Alicea’s directives and sought her guidance. On February 23, 2020, the prosecutor issued a six-page letter to Beu, copying in Alicea, concerning her directives on the situation. (R-59.) The prosecutor advised that “The decision to release records from an investigation is a separate and distinct analysis. . . The City should be reminded of the same when threatening discipline while demanding access to Internal Affairs records as the Attorney General has given the Law Enforcement Executive the sole and complete discretion to make a good cause analysis as to whether internal affairs files should be released and under what terms.” (R-59 at 4-5.)

On February 24, 2020, Alicea issued another written directive ordering Beu to release the IA files to Gelfand by 9:00 a.m. on February 25, 2020, and that failing to do so would be considered intentional defiance of this directive. (R-60.) This directive did not indicate that Beu could withhold documents on the basis of a good faith analysis and required that he turn over all the files. The prosecutor testified that Alicea’s directive in R-60 conflicted with her directions to Beu set forth in her February 23, 2020, letter. (R-59.) Beu responded on February 25, 2020, at 8:58 a.m. and stated that Alicea’s directive conflicted with the prosecutor’s directive, that he found good cause and would allow access to certain files, but that he needed additional information to make a good cause analysis as to the rest. (R-61 and R-63.) Beu granted access to certain files, provided

his rationale for not finding good cause on others and noted that certain other documents were not actually internal affairs files and were available for Gelfand's review. (R-61-R-63.)

Since Beu did not release all of the files, the PNDA was issued the next day on February 26, 2020, suspending Beu and demoting him to deputy chief. (J-2.)

Alicea did not file an IA complaint with the prosecutor's office regarding Beu's alleged insubordination and therefore, there was no IA investigation conducted by the prosecutor's office regarding the allegations of insubordination by Chief Beu prior to the issuance of these charges and the City's suspension of him and demotion to Deputy Chief.

The VPD Rules and Regulations state, in part:

1:4.10 Lawful Orders

Any written or verbal directive issued by a superior officer to any subordinate or group of subordinates in the course of police duty which is not in violation of any law, ordinance or any department rule or regulation.

3:1.6 Insubordination

Employees shall not

1. Fail or refuse to obey a lawful order given by a supervisor ('supervisor' is defined as someone who "shall be able to perform all of the general duties of a police officer." R165, at §2:1.2. Thus, it does not include a civilian public safety director.)
2. Use any disrespectful or abusive language/action towards a specific supervisor

3:3.2 Obedience to Unlawful Orders

Employees are not required to obey any order, which is contrary to any law or ordinance.

R-165.

Director Alicea lacked the authority to issue an order to Beu to release the IA records and his orders purporting to do so were unlawful and contrary to the IAPP guidelines and the prosecutor's directives. Prosecutor Jennifer Webb-McRae on September 3, 2019, previously advised Director Alicea that he could not direct anyone to release information about confidential internal affairs files. (P-152.)

Therefore, Beu cannot be guilty of any 4A violations, including insubordination, or violations of any VPD Rules and Regulations related to his refusal to release IA records in response to Alicea's various inappropriate and or unlawful directives which conflicted with the IAPP and the Prosecutor's directive.

Furthermore, Beu did provide a response to each directive given by Alicea. Aside from the last directive requiring Beu to turn over all of the files, the prior directives sought Beu to provide the files or specify good cause for not producing the files which Beu did in his responses to Alicea's directives. In fact, the AGs IAPP guidelines do not require Beu to explain his good cause for not producing IA files but rather allows Beu to provide access to IA files if he determines good cause exists to produce same. It was within Beu's sole discretion to allow for the release of IA files that did not fall into the enumerated provisions allowing for disclosure of IA files.

It is also important to note that the City could have sought a directive from the AG's office for the release of the files, once the prosecutor's office declined to order Beu to release them, or the City could have obtained a court order for the release of the files, all of which would have been more appropriate and lawful avenues for the City to take to secure the release of the IA files. Instead, the City chose to undertake a coercive course of action against Beu in its repeated demands for the IA files under threats of discipline and then finally suspending and demoting Chief Beu when they did not get their way.

As far as the holding in Palamara v. Twp. Of Irvington, OAL Docket CSV 3768-02, Agency Docket 2002-3352-I (May 9, 2003), it is distinguishable from this case before me, in that in Palamara, the County Prosecutor ordered the police chief to provide the IA

records to the director, which is one of the enumerated provisions in the IAPP allowing for disclosure of IA files. That is not so in this case, where the prosecutor's office determined that they were not going to direct Beu to release the IA files and that the decision to release the IA files was solely in the discretion of Chief Beu. He exercised his discretion and determined that good cause did not exist for the release of the IA files and therefore, should not be disciplined for exercising something solely within his discretion.

It is also noted that the City has previously conceded the point that Beu cannot be disciplined for exercising his discretion in denying the release of IA files if he found that good cause did not exist for their release. As determined by Judge Telsey in Beu v. City of Vineland. CUM-L-158-20, the judgment of Chief Beu in making a determination that there was not good cause was not an issue before the Superior Court and again would not be an issue before the Civil Service Commission. (J-5.) The City had argued that they were seeking to discipline Beu for "stonewalling" them in not providing responses to Alicea's directives. Yet the facts indicate that Beu did provide timely responses to Alicea's directives, the City just did not like Beu's responses.

Based on the above, I **CONCLUDE** that respondent has failed to prove any misconduct on the part of Beu regarding the allegations against Beu as to the obstruction/insubordination charges as set forth in Schedule A of the FNDA by a preponderance of the credible evidence.

Joshua Sheppard charges

Officer Joshua Sheppard is the father of a child through his relationship with Officer Kimberly Beu and, as such, is the father of Chief Beu's grandchild. Accordingly, Chief Beu had a direct relationship conflict of interest in his intercession with the disciplinary action originally proposed against Officer Joshua Sheppard, with that intercession, resulting in a reduced disciplinary penalty for Officer Sheppard.

As previously set forth in the findings of facts, Officer Sheppard is the father of Chief Beu's granddaughter through Sheppard's relationship with Beu's daughter, Kimberly Beu. However, according to the Vineland PD Rules and Regulations, there was not a direct relationship conflict of interest between Beu and Sheppard as defined in the

rules. The general order on fraternization and relationships from the VPD, GO 2015-10, was promulgated by Beu's predecessor, Chief Codispoti. (R-164.) Beu has not had a personal relationship with Josh Sheppard as said term is defined in the policy. He has not had a romantic relationship with Officer Sheppard as defined by general order 2015-010.

A member of the immediate family shall be defined as the spouse or dependent child of a local government officer residing in the same household. (R-166.) Josh Sheppard was never Beu's spouse, a dependent child or lived in the same household as Beu.

As set forth in the findings of facts, Triantos was the investigating IA officer who recommended charges against Sheppard and the officer involved, Rivera. Beu sustained all of the charges recommended by Triantos, the most serious which was insubordination as to both officers. Triantos' report did not recommend any discipline and Beu did not intercede in reducing any discipline. It is within the chief's purview to decide the appropriate discipline. Based on the facts of the case as set forth in the findings of fact, Beu decided the appropriate discipline for both officers would be verbal counselling. During the course of the investigation, the prosecutor's office looked at prior cases involving insubordination and found the range of discipline imposed ranged from counselling, performance notices and written reprimands and concluded that the discipline Beu issued to Sheppard was within the appropriate realm of discipline for the nature of the infraction and his disciplinary history.

The prosecutor's office concluded at the end of their investigation into this matter on September 3, 2019, that Beu was exonerated, which under the IAPP means the incident occurred but there was no violation. (R-152.) Although the prosecutor concluded there was no conflict of interest, she counselled Beu to be aware of the appearance of a possible conflict in future matters.

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

Direct Conflict of Interest charges

Chief Beu has had a direct conflict of interest in having undertaken the conduct of review of numerous requests by Public Safety Director Alicea for certain investigative materials related to allegations of police misconduct, some of which have implicated Chief Beu.

As discussed in the findings of facts regarding the obstruction/insubordination charges, the prosecutor had directed Alicea on numerous occasions to direct any requests for IA files involving Chief Beu to her attention and not to Chief Beu.

Based on the above, I **CONCLUDE** that respondent has failed to prove the allegations against Beu as to the direct conflict of interest charges as set forth in the FNDA by a preponderance of the credible evidence.

Kimberly Beu charges

On December 18, 2019, when interviewed by the Cumberland County Prosecutor's Investigation Staff, Chief Beu falsely testified that "he had no influence over his daughter, Kimberly Beu, being assigned to the Juvenile Unit."

As set forth in the findings of facts, Chief Beu did not have any influence over his daughter being assigned to the juvenile unit. Sgt. Harris and Captain Bowers wanted Kim Beu in their unit and requested her. When she was assigned to juvenile, she had the requisite three years of service required by the unwritten 'Chief's rule.' As Chief, he signed the personnel order transferring her to juvenile. He was not asked, nor did he deny signing the personnel order. Chief Beu testified truthfully in his December 18, 2019, interview with the CCPO.

Based on the above, I **CONCLUDE** that respondent has failed to prove the allegations against Beu as to the Kimberly Beu charges as set forth in Schedule A of the FNDA by a preponderance of the credible evidence.

The 45 Day Rule

Although I have concluded that respondent has failed to prove the charges against Beu as to the Sheppard and Kim Beu allegations set forth in the FNDA by a preponderance of the credible evidence, the Sheppard and Kim Beu Rules and Regulations Charges are also barred by the 45-Day Rule. Pursuant to N.J.S.A. 40A:14-147:

Except as otherwise provided by law, no permanent member or officer of the police department or force shall be removed from his office, employment or position for political reasons or for any cause other than incapacity, misconduct, or disobedience of rules and regulations established for the government of the police department and force, nor shall such member or officer be suspended, removed, fined or reduced in rank from or in office, employment, or position therein, except for just cause as hereinbefore provided and then only upon a written complaint setting forth the charge or charges against such member or officer.

A complaint charging a violation of the internal rules and regulations established for the conduct of a law enforcement unit shall be filed no later than the 45th day after the date on which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based.

A failure to comply with said provisions as to the service of the complaint and the time within which a complaint is to be filed shall require a dismissal of the complaint.

“The intent of the statute is to protect law enforcement officers from an appointing authority unduly and prejudicially delaying the imposition of disciplinary action.” Aristizibal v. City of Atl. City, 380 N.J. Super. 405, 428 (Law. Div. 2005).

With respect to the issues involving Sheppard, the City was aware of the alleged “misconduct” on June 19, 2019, when Tonetta complained to CCPO about it. (R-145.) The CCPO advised the City on September 3, 2019, that it exonerated Beu of any wrongdoing related to the conduct for which Beu is now charged. (R-152.) Unhappy with the CCPO’s finding, Tonetta wrote to the Prosecutor on September 5, 2019, (with copies to the mayor and director of public safety) asking her to reconsider the decision. (R-153.)

When the prosecutor declined to change her decision, Tonetta then wrote to the director of the AG's Office of Law Enforcement Professional Standards on September 11, 2019, in an unsuccessful attempt to get that office to intervene and overrule the prosecutor's decision. (R-155.) Gelfand was not assigned to investigate the Sheppard matter and therefore the city did not need his report to possess sufficient information to bring charges against Beu related to the Sheppard matter. Alicea testified that he only charged Beu with a violation of the rules and regulations section 3:1.1 performance of duty in regard to Sheppard. The city did not file the disciplinary charge against Beu until February 26, 2020, (J-2) beyond the 45-day rule.

The FNDA includes a charge for a violation of VPD Rules and Regulations Section 3:13.5 Truthfulness, which provides that "Employees are required to be truthful at all times whether under oath or not." R-165, at § 3:13.5. Although as previously discussed, the City has not proven that Beu was untruthful in his interview with CCPO concerning Kim Beu, this rules and regulation charge is also violative of the 45-day rule. By letter, dated February 4, 2020, the prosecutor's office advised that as a result of their investigation, the allegations as to Chief Beu's providing favorable treatment to his daughter by placing her in the juvenile unit was determined to be "unfounded". The February 4, 2020, letter to Alicea from the prosecutor further advised that the City could obtain a copy of the prosecutor's file by contacting Chief of Staff E. Ron Cuff. (P-3, R-115.) (R-169 at 20.) Gelfand testified that the City obtained a copy of the prosecutor's file regarding the Kim Beu investigation within a couple of days of receiving the February 4, 2020, letter. (R-169 at 18.) Alicea also testified that the City obtained the Kim Beu file from the CCPO in February 2020. Gelfand issued his report on February 25, 2020. (R-168.) The charges regarding the Kim Beu matter were not added until the second amended PNDA dated June 15, 2020, (J-4) which is beyond the 45-day time limitation set forth in N.J.S.A. 40A:14-147.

Therefore, I CONCLUDE that the Rules and Regulations Charges against Beu concerning the Sheppard and Kim Beu matters are also barred by the 45-day rule and should also be dismissed.

Since I have concluded that respondent has failed to prove any of the allegations set forth in Schedule A of the FNDA by a preponderance of the credible evidence, all of the charges set forth in the April 26, 2021, FNDA are **DISMISSED**.

ORDER

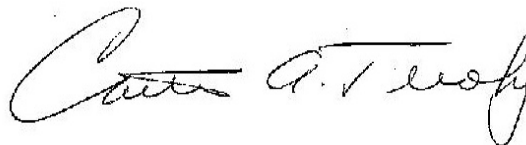
It is **ORDERED** that the charges and specifications made against the appellant set forth in the FNDA dated April 26, 2021, are not sustained. Appellant's appeal is **GRANTED**, and the charges are **DISMISSED**.

It is further **ORDERED** that appellant's suspension and demotion are **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.



June 23, 2025

DATE

CATHERINE A. TUOHY, ALJ

Date Received at Agency:

Date Mailed to Parties:

CAT/gd

APPENDIX

WITNESSES

For petitioner

Adam Austino
Matthew Finley
Stephanie Adams
Thomas Riordan
Shane Harris
William Riordan
Rudolph Beu, IV

For respondent

Harold Shapiro
Misaël Candelario
Kim Beu
Brad Marchesano
Matthew Finley
Gregory Pacitto
Lene Bowers
Steven Triantos
Adam Austino
Adam Shaw
Ron DeMarchi
Earnest Ronald Cuff, Jr.
Suzette DeMarchi
Jennifer Webb-McRae
Todd Gelfand
Ronald Henry
Edwin Alicea
Richard Tonetta

EXHIBITS

Joint

- J-1 FNDA dated April 26, 2021
- J-2 PNDA dated February 26, 2020
- J-3 First Amended PNDA dated March 2, 2020
- J-4 Second Amended PNDA dated June 15, 2020
- J-5 May 18, 2020, transcript (Beu v. Vineland)
- J-6 IAPP (November 2017)
- J-7 IAPP (December 2021)
- J-8 IAPP (December 2019)
- J-9 Proposed Joint Statement of Trial Testimony submitted 9/3/24

For petitioner

- P-1 Kimberly Beu, March 1, 2015, appointment
- P-2 December 2, 2019, Criminal Declination
- P-3 February 4, 2020, CCPO Clearance Letter
- P-4 February 4, 2020, Notice to Beu of Clearance
- P-5 October 9, 2019, Notes from Interview of William Riordan
- P-6 Demarchi November 1, 2019, lawsuit
- P-7 Demarchi January 24, 2020, Dismissal
- P-9 Rudolph Beu, September 4, 2019, note
- P-11 Bard Opinion
- P-12 Bard docket
- P-14 NJ.com article
- P-16 Photograph T-shirt
- P-17 Bernard v. Webb-Crae Order of Dismissal
- P-18 Uniform Code of Ethics 2021
- P-19 Austino MVR/Wiretap Exoneration Notice
- P-20 January 16, 2019, PBA Letter
- P-21 Newspaper Article re: search warrant

For respondent

R-1 Draft Complaint

R-2 City Policy 1151 and 1152

R-3 Email: June 26, 2019, (3:56 PM) Gelfand-Beu

R-4 Email: June 27, 2019, (7:05 AM) Gelfand-Beu

R-4C Email: July 16, 2019, (1:27 PM) Beu-Gelfand

R-4D Email: July 17, 2019, (9:36 AM) Gelfand-Beu

R-4DDEmail of July 17, 2019, (9:59 AM) (Beu-Hayducka)

R-4F Email: July 17, 2019, (10:00 AM) Beu-Gelfand

R-F Vineland Police Captain's Assoc._Grievance 2019-02

R-6 Notes: Todd Gelfand, July 18, 2019, Beu Phone Call

R-7 Email: July 29, 2019, (11:49 AM) Gelfand-Shapiro

R-8 Letter: July 29, 2019, Gelfand-Shapiro

R-9 Email: August 26, 2019, (10:10 AM) Moore-Gelfand

R-10 Letter: August 22, 2019, Shapiro-Gelfand

R-10A Text: August 20, 2019, Beu – Webb-McRae

R-11 Email: September 3, 2019, (10:57 AM) Gelfand-Shapiro

R-12 Email: September 9, 2019, (10:54 AM) Gelfand-Beu

R-13 Email: September 9, 2019, (10:59 AM) Gelfand-Beu

R-14 Email: September 12, 2019, (3:20 PM) Gelfand-Beu

R-15 Letter: September 17, 2019, Shapiro-Gelfand

R-16 Email: September 18, 2019, (10:22 AM) Gelfand-Beu

R-17 Email: September 24, 2019, (7:00 AM) Beu-Gelfand

R-18 Email: September 24, 2019, (8:14 AM) Tonetta – Webb-McRae

R-19 Email: September 24, 2019, (9:30 AM) Gelfand-Beu

R-20 Email: September 24, 2019, (10:44 AM) Gelfand-Beu

R-22 Email: September 24, 2019, (1:31 PM) Webb-McRae – Cuff

R-23 Email: September 24, 2019, (2:18 PM) Beu-Gelfand

R-24 Email: September 25, 2019, (1:04 PM) Tonetta-Shapiro

R-25 Email: September 25, 2019, (1:08 PM) Bell-Gelfand

R-27 Email: September 25, 2019, (2:30 PM) Gelfand-Bell

R-28 Email: October 4, 2019, (1:57 PM) Gelfand-Bell

R-29 Email: October 4, 2019 (2:22) Gelfand-Bell
R-31 Email: October 4, 2019 (4:33 PM) Gelfand-Bell
R-32 Letter: October 4, 2019 (Shapiro-Tonetta)
R-33 Email: October 10, 2019 (6:24 PM) Gelfand-Bell
R-34 Email: October 11, 2019 (12:43 PM) Bell-Gelfand
R-35 Email: October 11, 2019 (12:55) Gelfand-Bell
R-36 Email: October 16, 2019 (12:06 PM) Shapiro-Gelfand
R-37 Email: October 21, 2019 (5:21 PM) Bell-Gelfand
R-38 Email: October 22, 2019 (11:34 PM) Gelfand-Bell
R-39 Email: October 22, 2019 (1:37 PM) Gelfand-Bell
R-40 Email: October 29, 2019 (11:31 AM) Gelfand-Bell
R-41 Email: October 29, 2019 (12:01 PM) Bell-Gelfand
R-42 Directive: November 4, 2019
R-43 Email: November 22, 2019 (6:57 PM) Gelfand-Bell
R-44 Email: December 16, 2019 (6:40 PM) Bell-Gelfand
R-45 Email: January 3, 2020 (12:38 PM) Gelfand-Bell
R-46 Email: January 22, 2020 (10:44 AM) Gelfand-Bell
R-47 Directive: January 24, 2020
R-47A Email: January 24, 2020 (2:45 PM) Beu-Austino
R-47D Email of January 25, 2020 (1:18 PM) (Beu Webb- McRae)
R-48 Email: January 27, 2020 (9:09 AM) Beu-Alicea
R-48A Email: January 27, 2020 (10:04 AM) Webb-McRae-Necelis
R-49 Email: January 27, 2020 (2:43 PM) Alicea-Beu
R-49A Email of January 27, 2020 (3:42 PM) (Beu Webb-McRae)
R-50 Email: January 27, 2020 (4:21 PM) Bell-Gelfand
R-51 Email: January 27, 2020 (8:05 PM) Beu-Alicea
R-52 Directive: January 28, 2020
R-53 Directive: January 29, 2020
R-54 Email: January 29, 2020 (10:01 AM) Beu-Tonetta
R-54A Text: January 24-29, 2020 (Beu – Webb-McRae)
R-55 Letter: January 31, 2020 (Benson-Shapiro)
R-55B Email: February 6, 2020 (2:39 PM) Webb-McCrae – Eicher
R-55C Attachment to Email of Jennifer Webb-McRae to February 6, 2020

(Directives)

- R-55D Email of February 6, 2020 (3:05 PM) (Austino Henry)
- R-56 Directive: February 19, 2020
- R-57 Directive and Attachment, February 19, 2020
- R-57A Text: February 19-24, 2020 (Beu – Webb-McRae)
- R-57AA Email of February 19, 2020 (10:05 AM) (Beu Webb-McRae)
- R-57C Email: February 20, 2020 (4:58 PM) (Barile – Webb-McCrae)
- R-58 Email: February 21, 2020 (2:02 PM) Webb-McRae - Alicea
- R-58A Email of February 21, 2020 (8:50 AM) (Beu Alicea Webb-McRae)
- R-58B Email of February 23, 2020 (4:19 PM) (Webb-McRae Beu)
- R-59 Letter: February 23, 2020 (Webb-McRae – Beu)
- R-60 Directive: February 24, 2020
- R-60A Text: February 24, 2020 (Beu – Webb-McRae)
- R-61 Email: February 25, 2020 (8:59 AM) Beu-Alicea
- R-63 Letter: February 25, 2020 (Beu-Gelfand)
- R-65 Verified Complaint (Superior Court), Beu v. Vineland
- R-68 Letter: March 12, 2020 (Webb-McRae – Casiano)
- R-68A Email of March 12, 2020 (Webb-McRae Burke)
- R-69 Certification (Rudy Beu), March 16, 2020
- R-71 Email: March 25, 2020 (10:55 AM) Benson – Webb-McRae
- R-72 Letter: March 25, 2020 (Benson – Webb-McRae)
- R-73 Memo: (Memo in Support of City of Vineland Request for Certain VPD IA Files)
- R-74 Memo: March 25, 2020 (Vineland-CCPO) Exs. 1-3
- R-75 Memo: March 25, 2020 (Vineland-CCPO) Ex. 4, Certification of Todd Gelfand with Exhibits
- R-76 Memo: March 25, 2020 (Vineland-CCPO) Ex. 5
- R-77 Letter: March 26, 2020 (Necelis-Landi)
- R-78 Letter: March 27, 2020 (Shapiro-Benson)
- R-79 Certification (Todd Gelfand) May 8, 2020
- R-80 Email: May 15, 2020 (11:09 AM) Benson – Webb-McRae
- R-81 Letter: May 15, 2020 (Benson – Webb-McRae)

R-82 Letter: May 15, 2020 (Benson – Webb-McRae), Attachment (Memo to CCPO)

R-83 Email: May 22, 2020 (9:15 AM) Shapiro-Benson

R-84 Letter: May 27, 2020 (Henry-Gelfand)

R-85 Order: June 26, 2020 (Beu v. Vineland)

R-87 Certification (Todd Gelfand), July 9, 2020

R-88 Order: July 31, 2020 (Beu v. Vineland)

R-89 Letter: September 18, 2020 (Guinan-Peterson)

R-94 Email: September 9, 2017 (5:39 PM) Demarchi-Tonetta

R-95 Email: September 14, 2017 (8:06 PM) Tonetta-DeMarchi

R-97 Email: September 19, 2017 (6:09 PM) DeMarchi-Tonetta

R-98 Email: September 19, 2017 (6:16 PM) Demarchi-Tonetta

R-98A Email: April 30, 2019 (7:57 AM) Terenik-Petrosky

R-98B Email: May 17, 2019 (9:29 AM) Petrosky-Fanucci

R-98C Memo: OPRA Request (May 17, 2019)

R-98D Email: May 17, 2019 (12:16 PM) Beu-Petrosky

R-98E Email: May 21, 2019 (12:00 PM) Demarchi-Petrosky

R-99 Transcript: Demarchi Interview (TG) (July 18, 2019)

R-101 Transcript: Demarchi (S) Interview (September 20, 2019)

R-104 Transcript: Riordan Interview (October 9, 2019)

R-108 Transcript: Harris Interview (October 18, 2019)

R-110 Letter: December 2, 2019 (Webb-McRae – Beu)

R-112 Transcript: Cuff interview of Beu December 18, 2019 (PSU 19-0203) (R-112 at 149.5 to 181.1 and R-112 at 185.25 to 192.7)

R-113 Transcript: Adams Interview (December 19, 2019)

R-114 Report: CCPO PSU 19-0203 (January 27, 2020)

R-115 Letter: February 4, 2020 (Webb-McRae – Alicea)

R-116 Letter: February 4, 2020 (Henry-Beu)

R-117 Letter: February 4, 2020 (Henry-Demarchi)

R-119 Urban Dictionary “T-Bag”

R-120 Personnel Order 2015-006 (April 24, 2015)

R-121 Personnel Order 2016-004 (March 25, 2016)

R-122 Personnel Order 2016-005 (March 25, 2016)

R-123 Personnel Order 2016-029 (January 1, 2017)
R-124 Personnel Order 2017-11 (June 25, 2017)
R-125 Personnel Order 2017-017 (September 3, 2017)
R-126 Email: November 11, 2017 (3:20 PM) K. Beu – Finley
R-127 Text Message: January 23, 2018 (Finley-Pacitto)
R-128 Text Messages: (June 15, 2017 – March 6, 2018) (Finley-Pacitto)
R-129A Email: January 10, 2018 (8:37 AM) Austino-Beu
R-129B Email: January 19, 2018 (10:56 AM) Beu-Austino
R-129C Email: January 19, 2018 (12:10 PM) Austino-Beu
R-129F Email: February 22, 2018 (10:56 AM) Austino-Fulcher
R-130 Email: February 22, 2018 (1:55 PM) Bowers-All
R-131 Personnel Order 2018-003 (February 23, 2018)
R-132 Personnel Order 2018-004 (March 29, 2018)
R-135 Email: September 6, 2019 (6:01 PM) Webb-McRae – Cuff
R-138 Email: September 10, 2018 (8:18 AM) Candelario-Cuff
R-139 Email: September 11, 2019 (10:03 AM) Candelario-Cuff
R-143 Critical Incident Sheet (November 17, 2017)
R-144 Triantos Report, September 10, 2018 (Sheppard)
R-145 Email: June 19, 2019 (2:39 PM) Webb-McRae – Tonetta
R-146 Email: June 27, 2019 (3:23 PM) Tonetta – Webb-McRae
R-147 Email: June 27, 2019 (3:42 PM) Cuff-Alicea
R-148 IA Summary Report (June 28, 2019)
R-149 Complaint Notification: July 3, 2019
R-151 Report: CCPO PSU 19-0150 (August 7, 2019)
R-152 Letter: September 3, 2019 (Webb-McRae – Tonetta)
R-153 Email: September 5, 2019 (12:28 PM) Tonetta – Webb-McRae
R-154 Email: September 7, 2019 (4:38 PM) Tonetta – Webb-McRae
R-155 Email: September 7, 2019 (5:46 PM) Tonetta – Webb-McRae
R-156 Email: September 10, 2019 (1:24 PM) (Tonetta – Webb-McRae)
R-164 General Order 2015-010 (Fraternization and Relationships)
R-165 General Order 2018-002 (Rules and Regulations)
R-166 Policy 3160: Code of Ethics
R-168 Report: Todd Gelfand (February 25, 2020)

R-181 Video: Demarchi Interview (September 19, 2019) (on thumb drive provided by counsel on June 19, 2025)

R-182 Audio: Suzette Demarchi Interview (September 20, 2019) (on thumb drive provided by counsel on June 19, 2025)

R-188 Video: Riordan Interview (October 9, 2019) (on thumb drive provided by counsel on June 19, 2025)

R-191 Video: Harris Interview (October 18, 2019) (on thumb drive provided by counsel on June 19, 2025)

R-195 Video interview of Beu by Cuff December 18, 2019 (PSU 19-0203), 37:15 to 43:31 and 0:00 to 32:16 (on thumb drive provided by counsel on June 19, 2025)

R-197 Audio: Adams Interview (December 19, 2019) (on thumb drive provided by counsel on June 19, 2025)

R-200 Email: October 31, 2017 (3:01 PM) Finley-Sworn

R-201 Email: October 31, 2017 (3:48 PM) Finley-Supervisors

R-202 Work Schedule: Felipe Laboy (Dec. 2017-May 2018)

R-203 Production: Kim Beu (May 28, 2024), Texts and Social Media

R-204 Email: June 15, 2017 (11:00 AM) Henry-Thomas

R-205 "Austino Complaint Re – Gelfand" (Attachment to Email of February 6, 2020, (2:39 PM), Webb-McRae – Czepiel)

R-207 CCPO Production (9.5.24) (PSU 19-0150) CONFIDENTIAL subject to Consent Confidentiality Order

R-208 CCPO Production (9.5.24) (PSU 19-0203) CONFIDENTIAL subject to Consent Confidentiality Order

R-209 Video of Interview of Beu by Henry, December 18, 2019 (PSU 19-0318) (on thumb drive provided by counsel on June 19, 2025)

R-210 Transcript: Beu-Henry Interview (December 18, 2019)

R-211 Gelfand Notes: 11.15.19 Beu Interview Part 1

R-211A Gelfand Notes: 11.15.19 Beu Interview Part 2

R-212 RPC 1.7

R-213 RPC 1.9

R-215 Beu Written Notes and Text (RBEUOAL001-016)

R-223 CCPO Production and Index

R-224 8 C.F.R. § 214.14

R-225 U and T Visa Law Enforcement Resource Guide

R-226 AG Directive No. 2018-6

R-227 Emails (Tonetta-Tranchitella Feb.25, 2019 to Mar. 26, 2019)

R-228 Emails (Tonetta-Tranchitella Sept. 2, 2020)

R-229 February 6, 2025, letter from the U.S. Department of Justice to Mr. Cook
and Mr. Cook's January 23, 2025, letter to Homeland Security
Investigations

