

H.E. NO. 2020-6

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF NEPTUNE,

Respondent,

-and-

Docket No. CO-2017-230

POLICEMEN'S BENEVOLENT ASSOCIATION,
LOCAL NO. 74, INC.,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Commission dismiss a complaint alleging that the Township of Neptune (Township) violated the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4a(1) and (3), by removing two Policemen's Benevolent Association, Local No. 74, Inc. (PBA) unit members from the Monmouth County Emergency Response Team (MOCERT) in retaliation for engaging in protected activity. The Hearing Examiner found that the PBA failed to demonstrate by a preponderance of the evidence that protected activity was a substantial or motivating factor in the Township's decision to remove Township patrol officers O'Heney, Chippendale, and Maher from MOCERT or to discontinue the Township's participation in MOCERT. However, even assuming, arguendo, that the PBA had established a prima facie case of retaliation, the Hearing Examiner found that the Township demonstrated by a preponderance of the evidence that Township patrol officers O'Heney, Chippendale, and Maher would have been removed from MOCERT, and the Township's participation in MOCERT would have been discontinued, absent the protected activity; and that the Township established a legitimate business justification for its actions. The Hearing Examiner also found that the PBA failed to demonstrate by a preponderance of the evidence that the Township's course of conduct tended to interfere with, restrain, or coerce employees in the exercise of rights guaranteed by the Act; and that the Township established a legitimate and substantial business justification for its course of conduct.

A Hearing Examiner's Report and Recommended Decision is not a final administrative determination of the Public Employment Relations Commission.

The case is transferred to the Commission, which reviews the Report and Recommended Decision, any exceptions thereto filed by the parties, and the record, and issues a decision that may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

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Appearances:

For the Respondent, Grace, Marmero & Associates, LLP,
attorneys (Michael R. Burns, of counsel)

For the Charging Party, Mets, Schiro & McGovern, LLP,
attorneys (Brian J. Manetta, of counsel)

HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION

On April 25, 2017, Policemen's Benevolent Association, Local No. 74 (PBA) filed an unfair practice charge against the Township of Neptune (Township). The charge alleges that on March 21, 2017, the Township violated the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4a(1), (3), and (5), by removing two unit members - namely, Neptune Township Police Department (NTPD) patrol officer/PBA Vice President Robert O'Heney and NTPD patrol officer Ryan Chippendale - from the Monmouth County Emergency Response Team (MOCERT) in retaliation for engaging in protected activity.

On November 28, 2018, the Director of Unfair Practices issued a Complaint and Notice of Pre-Hearing determining that the 5.4a(1) and (3) allegations in the charge, if true, may constitute an unfair practice and dismissing the 5.4a(5) allegations as not meeting the complaint issuance standard. The Director assigned the matter to me for hearing. On December 7, 2018, the Township filed an Answer denying the PBA's allegations.

A hearing was held on June 20-21 and August 15-16, 2019.^{1/} The parties examined witnesses and exhibits were admitted into evidence. Post-hearing briefs were filed by January 15, 2020. Subsequent mediation efforts during the period January 16-31, 2020 were unsuccessful.

Based upon the record, I make the following:

FINDINGS OF FACT

I. The Parties' Stipulations

1. Policemen's Benevolent Association, Local No. 74, Inc. (PBA) is the exclusive representative of all patrol officers and detectives employed in the Neptune Township Police Department (NTPD). [1T8:21-24; J-3]
2. The Township of Neptune (Township) is a public employer as that term is defined in the New Jersey Employer-Employee

^{1/} Transcript references for
-the June 20, 2019 hearing are denoted by "1T";
-the June 21, 2019 hearing are denoted by "2T";
-the August 15, 2019 hearing are denoted by "3T"; and
-the August 16, 2019 hearing are denoted by "4T."

Relations Act (Act), N.J.S.A. 34:13A-1 et seq. [1T8:25 thru 1T9:2]

3. The Township and the PBA are parties to a collective negotiations agreement (CNA) in effect from January 1, 2017 through December 31, 2020. [1T9:3-5; J-3]
4. At all times relevant to the underlying unfair practice charge, James Hunt (Hunt) was/is the Township's Chief of Police (Chief). [1T9:6-8]
5. At all times relevant to the underlying unfair practice charge, Michael Bascom (Bascom) was the Township's Police Director (Director). [1T9:9-11]
6. NTPD patrol officer Robert O'Heney (O'Heney) is currently the Vice President of the PBA and has served in that position since June 2016. [1T9:12-14]
7. O'Heney served as Treasurer of the PBA from April 2014 until he was elected Vice President. [1T9:15-17]
8. O'Heney was a member of the Monmouth County Emergency Response Team (MOCERT) from February 26, 2014 until March 21, 2017. [1T9:18-22]
9. MOCERT is comprised of officers from municipalities throughout Monmouth County (County) and provides tactical support to local law enforcement units. [1T9:23 thru 1T10:1]

10. As a member of MOCERT, O'Heney was required to attend two days of training per month and one week of training per year in either October or November. [1T10:2-5]
11. In August 2016, the PBA sent a letter to then-Director Bascom and Chief Hunt, signed by PBA President Thomas Blewitt (Blewitt), PBA Vice President O'Heney, and NTPD Lieutenant/FOP Lodge No. 19 (FOP)^{2/} President Scott Cox (Cox), which outlined the PBA's and FOP's concerns about the NTPD. [1T10:6-11]
12. In September 2016, Blewitt, O'Heney, Cox, NTPD Captain Michael McGhee (McGhee), NTPD Captain Anthony Gualario (Gualario), Bascom, and Hunt met to discuss the issues raised in the PBA's letter. [1T10:12-16]
13. In October 2016, the parties met again to discuss the contents of the PBA's letter. Blewitt, O'Heney, Cox, McGhee, Gualario, Bascom, and Hunt were present. [1T10:17-22]
14. O'Heney was denied time off on December 7, 2016 to attend MOCERT training. [1T10:23-25]
15. Chief Hunt issued a memorandum dated March 21, 2017 indicating that NTPD patrol officers O'Heney, Ryan

^{2/} The FOP represents superior officers employed by the Township. [2T180:7-18]

- Chippendale (Chippendale), and Bryan Maher (Maher) were no longer assigned to MOCERT. [1T11:1-4]
16. Chippendale was assigned to the MOCERT Tech team from November 5, 2015 until March 21, 2017. [1T11:5-7]
 17. NTPD detective Nicholas Taylor (Taylor) was assigned to MOCERT as an operator from February 25, 2015 until February 2, 2018. [1T11:8-10]
 18. O'Heney was assigned to MOCERT as an operator from February 26, 2014 until March 21, 2017. [1T11:11-13]
 19. Maher was assigned to MOCERT as an operator from February 26, 2015 until March 21, 2017. [1T11:14-16]
 20. NTPD Sergeant Frederick Faulhaber (Faulhaber) was assigned to the MOCERT Tech team from February 1, 2015 until February 8, 2018. [1T11:17-19]
 21. NTPD officer Carrie Colbert (Colbert) was assigned to the Monmouth County Prosecutor's Office (MCPO) from June 2, 2014 through June 23, 2015. [1T11:20-22]
 22. NTPD officer Bryan Taylor (B. Taylor) was assigned to the MCPO from May 1, 2017 through December 31, 2017. [1T11:23-25]
 23. NTPD officer Mysonn Ledet (Ledet) was assigned to the MCPO from January 1, 2018 through December 31, 2018. [1T12:1-3]

24. NTPD officer Javaughn Rogers (Rogers) was assigned to the MCPO from January 1, 2016 through December 31, 2016.

[1T12:4-6]

25. Taylor was assigned to the MCPO from September 11, 2012 through May 30, 2014. [1T12:7 thru 1T13:3]

26. NTPD officer James MacChonchie (MacChonchie) was assigned to the MCPO from January 1, 2019 to the present (June 14, 2019). [1T13:4-7]

27. NTPD officer Kaan Williams (Williams) was assigned to the U.S. Drug Enforcement Agency (DEA) from March 3, 2015 through March 15, 2017. He was also assigned to the Federal Bureau of Investigation (FBI) from May 13, 2013 through April 1, 2014. [1T15:5-8]

28. NTPD officer Frank Maletto (Maletto) was assigned to the DEA from May 6, 2017 to the present (June 14, 2019). [1T15:9-11]

29. NTPD officer Jose Arce (Arce) was assigned to the FBI from October 2007 through December 2012. [1T15:12-17]

II. Facts Adduced from Witness Testimony and Admitted Evidence**A. PBA Local 74**

30. Blewitt has been employed by the Township as a police officer since January 1, 2009. [1T33:12-19; CP-11] Blewitt also serves as PBA President, a position he has held since 2016. [1T33:24-25; 1T34:1-3] As PBA President, Blewitt engages in labor negotiations, holds monthly meetings, and accepts member complaints and grievances. [1T34:17 thru 1T35:6]
31. O'Heney has been employed by the Township as a police officer since July 11, 2011. [2T6:3-17] O'Heney also serves as PBA Vice President, a position he has held since June 2016. [1T9:12-14] O'Heney served as the PBA Treasurer from 2014 until he was elected PBA Vice President in 2016. [1T9:18-22; 1T11:11-13; 2T7:22 thru 2T8:4] O'Heney was assigned to MOCERT as an operator from February 26, 2014 through March 21, 2017. [1T11:11-13]
32. Chippendale has been employed by the Township as a police officer since July 23, 2013. [1T137:19 thru 1T138:2; CP-11] Chippendale is active in the PBA. [1T35:7-23; 1T139:24 thru 140:17] He attends PBA meetings as often as he can and handles most aspects of the PBA's social media presence - i.e., he administers the PBA's Instagram account and Facebook page; he holds the domain title for the PBA's

website. [1T35:20-23; 1T140:1-13] Chippendale is open about his involvement in the PBA and is certain that other people within NTPD know about his PBA activities.

[1T140:14-17] Chippendale was assigned to MOCERT as a technician from November 5, 2015 until March 21, 2017.

[1T11:5-7]

B. The Neptune Township Police Department (NTPD)

33. NTPD is comprised of a chief, deputy chief, captains, lieutenants, sergeants, police officers, and part-time special law enforcement officers. [1T36:1-10]
34. Chief Hunt testified that as the Township's Chief of Police, he is in charge of NTPD and makes policy decisions.
[3T236:17 thru 3T237:3] Hunt testified that training issues are solely within his discretion. [3T237:4-6] He also testified that he has authority to determine whether NTPD participates in programs like MOCERT, the Monmouth County Serious Collision Analysis Response Team (SCART), and/or the Rapid Deployment Force (RDF). [3T237:7-15]
35. Bascom served as the Township's Police Director from June 2013 until July 2017. [3T63:16-20] Bascom testified that as Director, he was responsible for oversight and policy development of NTPD and established a chain of communication between the chief of police and the governing body.
[3T6:9-14]

36. McGhee has been employed by the Township as a police officer since October 15, 1999. [CP-11] On August 1, 2016, then-Lieutenant Michael McGhee (McGhee) was promoted to captain of operations. Captain McGhee testified that his duties as captain included "day-to-day operations of the patrol officers, the Street Crimes Unit, the Detective Bureau at the time, [and] public information officer." McGhee testified that he was "responsible for handling scheduling . . . [including] making sure the officers' schedules didn't conflict . . . [and] making sure that there was minimal manpower and staffing on each shift"; and that he had "authority to assign officers overtime if it was necessary to cover the minimums." [3T112:10 thru 3T113:6]
37. Captain McGhee testified that Robert Mangold (Mangold) preceded him as captain of operations. Mangold was no longer working when McGhee assumed his position in August 2016. However, during the transition period, McGhee had conversations with Mangold "to get some insight into how he would handle certain things." McGhee never had a conversation with Mangold specifically regarding scheduling for MOCERT and/or MOCERT-related activities. [3T113:7 thru 3T115:4]
38. NTPD Lieutenant Scott Cox (Cox) has been employed by the Township as a police officer since July 3, 1995. [2T177:10

thru 2T178:25; CP-11] Cox also serves as the FOP President.

[2T180:7-18] Cox testified that since 2014, his duties as a lieutenant include "run[ning] the day-to-day patrol shift" and "supervis[ing] . . . [s]ergeants and below on patrol"; and that he is responsible for "mak[ing] the schedule."

[2T179:1-19]

39. When NTPD hires a new officer, he/she is generally assigned to the Patrol Division. [1T38:13-16; 4T94:23 thru 4T95:6] The majority of NTPD officers are assigned to the Patrol Division. [1T36:17-25] NTPD officers are also assigned to the Detective Bureau, the Street Crimes Unit, the Administrative and Support Unit, and Internal Affairs.

[1T36:17-25]

40. The Street Crimes Unit is a specialized unit within NTPD.

[2T41:20 thru 2T42:3] NTPD officers assigned to the Street Crimes Unit wear plain clothes and operate independently of patrol. [2T41:20 thru 2T42:3] The Street Crimes Unit does not perform typical patrol work in terms of being dispatched and responding to calls. [2T42:4-8] There are typically 6-8 employees assigned to the Street Crimes Unit - i.e., 4 officers and 2-4 supervisors. [2T42:9-16]

41. NTPD officers may have collateral duties/assignments including the Monmouth County Serious Collision Analysis Response Team (SCART), Drug Recognition Expert (DRE), Active

- Shooter Response Team (ASRT)/Southern Monmouth County Active Shooter Partnership (SMCASP), and/or the Rapid Deployment Force RDF. [1T39:5-13; 2T43:15-21] NTPD officers may attend various types of training and/or schools. [1T39:13-15]
42. NTPD officers who are collaterally assigned to SCART attend regular training. [1T45:6-10] However, the training is minimal; there are more call-outs for SCART than training. [3T215:13 thru 3T216:1] The Township's answers to interrogatories indicate that only one NTPD officer is involved in SCART. [CP-28]
43. NTPD officers who are collaterally assigned to DRE are tasked with enforcing laws pertaining to intoxicated drivers/subjects. The Township averages approximately 120-170 intoxicated drivers per year. [1T108:11 thru 1T109:5] Blewitt testified that two NTPD officers "are involved in the DRE program" [1T108:11-13]; however, the Township's answers to interrogatories indicate that only one NTPD officer is involved in the DRE program [CP-28].
44. NTPD officers who are collaterally assigned to RDF assist municipalities by performing police services when there is a large-scale emergency that requires all the assets of the local police department. [4T40:1-16; 2T43:15-21] NTPD officers assigned to RDF attend regular/recurring training.

[4T40:17-23; 1T45:3-5] Captain McGhee testified that there were at least three NTPD officers assigned to the RDF in 2016, although there could have been four. [3T215:2-12]

The Township's answers to interrogatories indicate that only three NTPD officers are involved in RDF. [CP-28]

45. NTPD began participating in the SMCASP/ASRT "in late 2015, and . . . really got full bore in that in 2016"; by "2017 it was signing numerous officers on a monthly basis to go to this active shooter partnership." Chief Hunt testified that SMCASP/ASRT is "a group of . . . 12 local towns . . . [that] train together as a unit to address an immediate active shooter response"; "all [NTPD] officers now are active shooter trained and they go once, sometimes twice, [per year] to this active shooter training." [4T38:22 thru 4T39:23] The Township's answers to interrogatories indicate that all NTPD officers are involved in SMCASP/ASRT. [CP-28; 3T96:19 thru 3T97:3; 3T217:19 thru 3T218:21]

46. NTPD officers are also loaned to outside agencies including MCPO, DEA, and FBI. [1T38:17 thru 1T39:4] According to Chief Hunt, generally "both agencies" sign a "memorandum of agreement" specifying that the NTPD officers are "working under [the other agency] but . . . [the Township] pay[s] their salary, they still work for [NTPD], they have to

adhere to training policies . . . [and] they're still police officers in Neptune." [4T134:25 thru 4T136:25]

47. NTPD officers assigned to the MCPO remain Township employees, but their day-to-day work is with the MCPO. [1T40:4-17] The Township's answers to interrogatories indicate that since 2012, typically only one NTPD officer is assigned to MCPO at any given time on a rotating basis. [CP-28]
48. NTPD officers assigned to the DEA remain Township employees and may work some cases in the Township, but they are generally assigned to field offices outside the area throughout New York and New Jersey. [1T40:4 thru 1T41:13] They are not assigned to the Patrol Division. [1T41:4-6] The Township's answers to interrogatories indicate that since 2015, typically only one NTPD officer is assigned to DEA at any given time on a rotating basis. [CP-28]
49. The Township initiated a process to purchase new radios for NTPD in late 2014 that was completed in July 2016. [3T7:9 thru 3T9:5] Then-Director Bascom "was one of the point person[s]" responsible for purchasing the new radios and worked closely with Sergeant Faulhaber, Monmouth County Sheriff Shaun Golden (Golden), Monmouth County Undersheriff Robert Dawson (Dawson), and Sheriff Golden's communications team. [3T65:25 thru 3T66:22; R-5; R-15 R-38; R-46; R-47]

50. Ultimately, the Township decided to purchase Tait radios, rather than Motorola radios, for NTPD. [3T9:6 thru 3T21:16] Bascom testified that Tait radios "agree[d] to make some upgrades to the County['s new digital] system to support Tait." [3T16:25 thru 3T17:8]
51. Bascom conceded that NTPD's new Tait radios "were very expensive" and that he spent approximately \$550,000 in total - i.e., \$400,000 for the hand units, and an additional \$100,000 - \$150,000 for the patrol vehicle units. [3T66:23 thru 3T68:25]

C. NTPD Manpower

52. NTPD manpower has increased since 2014. [1T37:1-8; 3T93:24 thru 3T94:2]
53. In 2014, there were "either 76 or 74" NTPD officers. [3T94:11-14]
54. In 2016, NTPD hired 6 officers. [CP-11]
55. In 2017, NTPD hired 5 officers. [CP-11; 3T94:5-8]
56. In 2018, NTPD hired 5 officers. [CP-11]
57. Bascom testified that NTPD's manpower increased by "either 2 officers or 4" between 2014 and 2017. [3T94:24 thru 3T94:2] Bascom testified that 8 additional officers were hired in 2016. [3T94:2-4] Bascom also testified that NTPD's manpower reached a maximum of 78 officers in 2017, although he conceded that there may have been additional officers

working during a transitional period when employees were retiring or in the process of being hired. [3T94:18-23]

58. Chief Hunt concurred with Bascom's assessment that between 2014 and 2017, NTPD's manpower increased to 78 officers. [4T92:15 thru 4T93:20] Hunt testified that NTPD's maximum manpower was 78 officers except for a period of two months when there were 80 officers. [4T11:2-8] He also testified that 8 or 9 officers were hired in 2016; and additional officers were hired in 2017. [4T93:3-20]
59. I credit the testimony of Bascom and Chief Hunt regarding the specific number of additional officers hired by NTPD to the extent that it is consistent with NTPD's Roster. [CP-11]
60. Chief Hunt testified that in 2015, the NTPD had to account for 119 FMLA leave days; in 2016, the NTPD had to account for 229 FMLA leave days; and in 2017, the NTPD had to account for 118 FMLA leave days. [4T48:15 thru 4T49:3; R-152^{3/}]

3/ The PBA objected to the admission of R-152, asserting that it is hearsay evidence and was not produced during the course of discovery. [4T49:4 thru 4T50:9] R-152 is an email dated June 4, 2019 from Patricia DeRosa (DeRosa) to Chief Hunt providing a breakdown of FMLA leave days by year and NTPD officer. I overrule the PBA's objection. Even if R-152 is hearsay, it is subject to the residuum rule and I find that Chief Hunt provided sufficient legally competent evidence (i.e., Hunt confirmed that the figures in R-152 were pulled from records maintained by NTPD; Hunt verified
(continued...)

61. Chief Hunt testified that although there was reduced manpower in 2016 due in part to FMLA leave, the NTPD "always had the schedules staffed appropriately." [4T7:6 thru 4T10:19] He also testified that NTPD officers out on FMLA leave, particularly in 2016, were expected to return to work. [4T139:7 thru 4T140:9]
62. O'Heney testified that "in 2016 there were manpower issues" and "that was part of the reason . . . why the PBA issued the letter in August 2016." O'Heney testified that "[t]hose manpower issues caused [him] concern for the safety of [his] fellow officers"; that "[if] a shift is at minimum manpower, [O'Heney] [didn't] think that's a safety concern . . . [b]ut if it goes below it for some reason, that would be a safety concern." [2T105:6-25] O'Heney also testified that although he couldn't provide a specific date/time, there were times when "the shifts [went] below minimum manpower." [2T106:1-6]

3/ (...continued)
that the figures were accurate before the hearing [4T46:8 thru 4T49:3]) to support a finding of fact regarding the number of FMLA leave days taken by NTPD officers from 2015-2017. See N.J.A.C. 1:1-15.5. Moreover, even if R-152 was not produced during the course of discovery, the PBA had an opportunity to examine its own witnesses, cross-examine the Township's witnesses, and to call rebuttal witnesses including DeRosa. [3T171:6 thru 3T174:6] The PBA did not present any case on rebuttal and has not raised any doubt regarding the reliability/accuracy of R-152.

63. I credit Chief Hunt's testimony that NTPD had schedules staffed appropriately in 2016 despite reduced manpower. O'Heney was unable to point to any specific date/time/shift when NTPD actually fell below minimum manpower.

D. Monmouth County Emergency Response Team (MOCERT)

64. MOCERT is a Special Weapons and Tactics (SWAT) team.

[2T10:4-11] The "Monmouth County Uniform Policy, Emergency Response Team (MOCERT)," provides that the purpose of MOCERT is the following:

To provide the municipalities of Monmouth County with a highly trained tactical police unit to respond to and address critical incidents involving hostage/barricade, sniper, armed barricaded subjects and other situations outside of the parameters of normal police work. To provide a reaction force and security force for major events when appropriate and for "soft targets" where it has been determined that a threat of terrorism is present. To relieve municipalities of some of the financial burden associated with these events by providing this service without the specter of a bill for these services.

[CP-13]

65. MOCERT members train together monthly and are tasked with responding to critical incidents throughout the County.

[2T10:4-11] MOCERT members also respond to call-outs and attend pre-planned security operations. [2T21:12-22]

66. Blewitt and O'Heney testified that MOCERT is a prestigious assignment. Blewitt testified that "everyone looks highly upon a SWAT officer." [1T46:10-20; 2T14:14-22]
67. The Township "had an obligation to help fund the program" that "[was] generally \$1,000 per year" regardless of whether NTPD officers were permitted to participate in MOCERT. [3T60:14 thru 3T62:17; R-149]
68. NTPD officers with 3-4 years of full-time experience and authorization from the chief of police were permitted to try-out for MOCERT. [2T10:12-17; 2T9:18 thru 2T10:3] Blewitt testified that "MOCERT was the one assignment that was equal among[] all members . . . [because] [t]hey were all given the opportunity to try out, as long as they had the required 3 years to apply." [1T47:3-17] Captain McGhee concurred that the option to try out for MOCERT was open to anyone in NTPD with the minimum amount of time in service and Chief Hunt's permission. [3T185:11-25; CP-25]
69. If a NTPD officer has the requisite experience and authorization to participate in MOCERT, he/she must then go through the MOCERT application process, which includes a paper application, physical test, and shooting test. [2T9:18 thru 2T10:3; CP-13] In addition, there is an oral board interview, psychological examination, medical

examination, and background investigation. [2T9:18 thru 2T10:3; CP-13; CP-25]

70. MOCERT members are either operators or technicians.

[2T15:11 thru 2T16:9] Operator is the basic entry level position on MOCERT; operators perform a wide range of tasks.

[2T15:11 thru 2T16:9] They can do "anything from perimeter security right up to the first person in the door for an arrest or a rescue team for any given incident, whether it's a barricaded subject, or a hostage situation, or high-risk warrant service." [2T15:17-22] Operators are issued a carbine rifle or sub-machine gun by their municipal police department; operators are also issued protective equipment, including ballistic vests and helmets, by MOCERT.

[2T16:12-25] Technicians operate specialized equipment including a bomb robot, hostage telephone system, camera system, light system, and drones. [1T142:4 thru 1T143:8]

71. MOCERT training is provided to MOCERT members at no additional cost to participating municipalities. [4T95:24 thru 4T96:16]

72. MOCERT operators are required to attend two training days per month and one training week per year. In order to maintain an active status with MOCERT, operators are required to attend 80% of the training exercises. However, it is unclear what consequences (if any) would flow from a

MOCERT operator's failure to attend 80% of the training exercises. [2T17:1 thru 2T18:1; 3T230:15-22; 3T279:8 thru 3T284:11; 4T76:11 thru 4T82:3; CP-14; CP-16; R-116]

73. MOCERT technicians attend training, but it is typically unstructured, unscheduled, and on the technician's own time. [1T144:17 thru 1T145:20] Technicians train 2-3 times per month; most of the training is coordinated among members of the MOCERT Tech team and involves drilling/practicing with the equipment, making sure that it works, rotating batteries, and taking equipment apart and putting it back together again. [1T144:17 thru 1T145:20] Technicians also attend larger drills that are requested by MOCERT Command Staff in order to incorporate all aspects of MOCERT. [1T144:17 thru 1T145:20]

74. In addition to training, MOCERT members respond to call-outs, which happen spontaneously. [2T21:12-22] There are also a number of pre-planned security operations throughout the year - e.g., MOCERT provides security for the New Jersey Marathon in Long Branch. [2T21:12-22; CP-16; R-52]

E. NTPD's Participation in MOCERT

75. In 2014, NTPD officers were permitted to participate in MOCERT for the first time. Chief Hunt was "approached by O'Heney . . . [who] asked if [NTPD] could move forward and allow [O'Heney] to go into [MOCERT]." [3T237:16-24]

76. Chief Hunt testified as follows regarding why he allowed NTPD officers to participate in MOCERT:

- Q. And why did you say yes when previous chiefs had not?
- A. Well, taking over as the new chief I have allowed a lot of programs, we've allowed the officers to go to more training, I've increased the training budget, we did a lot of things, and [O'Heney] was an officer that wanted to go into that. I have spoken to Captain DuBrosky, Rich Conte, the people that were involved in MOCERT, and they all asked that, you know, if Neptune Township would get involved and send someone, and, so, the test period, or trial period, I said let's try it, and past chiefs wouldn't do it, but I opened it up and said let's try it.
- Q. And in your mind, was it ever intended to be more [than] a test period?
- A. I think we put it out there to see how it fit in with the Neptune Police Department and our daily role.

[3T237:25 thru 3T238:16]

77. O'Heney was the first NTPD officer assigned to MOCERT.

[2T14:23 thru 2T15:10] O'Heney testified that he began the process of becoming a MOCERT member in 2014. [2T10:24 thru 2T-11:1] O'Heney initially met with Chief Hunt, who was aware of MOCERT's training requirements before giving his permission, and obtained Hunt's authorization to try-out. [2T13:13-21; 4T142:18-22] O'Heney then completed a paper application and went to try-outs which consisted of a physical test and a shooting test. [2T13:13 thru 2T14:10] O'Heney testified that when he tried out for MOCERT, he did

so on his own time - i.e., his regular time off from work without compensation. [2T11:2-6; 2T36:1-14]

78. In 2015, four additional NTPD officers were permitted to join MOCERT - specifically, two operators and two technicians. [4T266:13 thru 4T269:1; 4T69:8-20; 4T70:8-14; R-3]
79. Between February 6-19, 2015, Chief Hunt exchanged emails with Donald Kronenwetter (Kronenwetter) - a retired police officer that oversees MOCERT together with Richard Conte (Conte) and Barry DuBrosky (DuBrosky) - regarding additional NTPD officers joining MOCERT. In the exchange, Hunt indicated that he "[had] received requests from four of [his] officers to attend the [MOCERT] physical test in May" but "cannot have four additional officers assigned to [MOCERT] if they all pass." Hunt also indicated that he was going "[to] choose two additional [officers] based on overall score and qualifications." [R-3]
80. Chief Hunt testified that "the way [he] was looking at it, [he] couldn't have any more than three operators assigned to MOCERT, and . . . one on each squad." Hunt "had three [NTPD] squads [or shifts] at the time, so [he] was looking to put . . . one [MOCERT] operator on each [NTPD] squad[/shift]." [3T266:13 thru 3T269:1]

81. On February 24, 2015, Captain Mangold sent an email to five NTPD officers that had previously shown an interest in MOCERT. Mangold indicated that if all five officers were still interested, only two would be permitted to join MOCERT. Mangold specifically stated the following: "If you have not already done so you must submit a memo to the [C]hief stating you are trying out for MOCERT on your own time." [CP-25 (emphasis in original); 3T90:8-19]
82. Chief Hunt testified that given that his name is listed at the top of Captain Mangold's February 24, 2015 email, he "believe[s]" that he received it in February 2015 despite the fact that he did not remember "seeing" it. When asked whether he protested the fact that Mangold was instructing NTPD officers to try out for MOCERT on their own time, Hunt failed to provide a substantive response. [4T70:15 thru 4T78:12; CP-25^{4/}] Hunt previously testified that he was not aware that MOCERT members were training "on their own time"; that he had not authorized Mangold to permit MOCERT members to train on their own time; and that if MOCERT members had

4/ Although CP-25 is an email from Captain Mangold to five NTPD officers, it also lists "Hunt, James" above the "From:" field. It appears that Mangold bcc'ed Hunt on this email; no other credible explanation has been offered. [4T70:15 thru 4T78:12] Accordingly, and particularly because the Township produced this document during the course of discovery, I find that CP-25 is reliable/accurate and that the email was in fact sent to, and received by, Hunt.

trained on their own time they should have been compensated by the Township. Hunt testified that Mangold should not have permitted MOCERT members to train on their own time.

[4T51:25 thru 4T54:22]

83. O'Heney testified that Captain Mangold's February 24, 2015 email was consistent with his recollection that in 2014, he tried out for MOCERT on his own time. [2T10:24 thru 2T13:11]

84. Ultimately, detective Taylor was assigned to MOCERT on February 25, 2015 and patrol officer Maher was assigned to MOCERT on February 26, 2015, both as operators. [1T11:8-16] In addition, Sergeant Faulhaber was assigned to MOCERT on February 1, 2015 and patrol officer Chippendale was assigned to MOCERT on November 5, 2015, both as technicians.

[1T11:5-7; 1T11:17-19]

85. O'Heney testified that "[w]hen [he] wanted to request attendance at MOCERT training . . . [t]he first person [he] would have asked would have been [his] shift commander, shift lieutenant." O'Heney testified that his shift commander from 2014 through 2017 was Lieutenant Cox and that "[i]f Lieutenant Cox couldn't give [him] the time to train, usually for a manpower shortage, then it would go up to . . . [C]aptain [Mangold]." [2T32:9 thru 2T33:9]

86. Lieutenant Cox confirmed that he "primarily work[s] [the] 3:00 to 11:00 [shift]" and that "[w]hen [he and O'Hene] were on the same shift", Cox "[was] his lieutenant."

[1T178:17 thru 1T180:6] Cox also testified that "[he] [made] the schedule for patrol when [NTPD] officers were assigned to MOCERT from 2014 to 2018." [1T180:19 thru 1T181:15]

87. Lieutenant Cox testified as follows regarding scheduling MOCERT training:

Q. So, you would make the schedule. Would the officers always, under any circumstances, be allowed to go to training?

A. No.

Q. And, under what circumstances would they be allowed to go to training?

A. If the manpower -- if there was enough officers working that somebody can take off. It wouldn't be any different if somebody wanted to take off for the day. If the manpower allowed for it, they were allowed to go to the training.

* * *

Q. So, under what instances would officers not be allowed to go to MOCERT training?

A. When you say "not be allowed", I don't know if I can speak on why they were not allowed, because -

Q. Well, manpower-wise.

A. Well, if that would have brought us below manpower. But, even so, if that was the case, I would then notify the captain and just let them know the officer has training on this day, what's the pleasure of the administration.

Q. And, oftentimes, so, let's say between 2014 and August 2016, would those changes be accommodated, generally?

A. Yes. I can't recall any issues.

[1T181:23 thru 1T183:20]

88. Lieutenant Cox testified that "MOCERT members [were] generally allowed to go to most of the training they requested" and that he was "aware that . . . certain individuals that were on MOCERT were attending training on their own time." Cox testified that he was never notified or informed by "anyone above [him] in the hierarchy of the [NTPD] . . . that [it] was improper [for MOCERT members to] attend training on their own time" and that he was not "aware of any officer that was disciplined for attending MOCERT training on his or her [own] time." [1T183:21 thru 1T186:14; R-34]
89. Lieutenant Cox testified that although MOCERT training could "[p]otentially" cause "a scheduling difficulty for the rest of the shift if you're already under-powered", he "[n]ever encounter[ed] . . . [a related] scheduling difficult[y]." [1T215:8 thru 1T218:10]
90. O'Heney testified as follows regarding when he was permitted to go to MOCERT training:
- Q. . . .So there were instances where - in what instance would you be permitted to go to MOCERT training?
- A. So I would be permitted to go to training in lieu of my regularly scheduled work shift as long as my shift maintained the appropriate staffing level. So, for example, in 2014 I was on the 3:00 to 11:00 shift, which the minimum staffing was seven. So if there were eight officers assigned to the shift that day, myself being the eighth,

I would be allowed to go to training as my work shift for that day because the shift would still be at its seven minimum. But if there was only seven and I would take the shift below seven by being gone to training, then I was not authorized to go as my work shift. I would have to go on my own time.

- Q. Okay. And how did you know that you were able to go to MOCERT training on your own time?
- A. I was told by my supervisors, either shift lieutenant at that time or initially the patrol captain was Captain Mangold. So I've been told by him on numerous occasions that if they weren't able to let me go for my shift, that I would go on my own time, that I could go on my own time.

[2T18:2 thru 2T19:5; 2T33:10 thru 3T37:2; CP-18]

91. O'Heney testified that he was "[n]ever advised that [he] could not attend MOCERT training on [his] own time" and that "[he] had discussions with Captain Mangold . . . which [O'Heney] took as permission to attend MOCERT training on [his] own time." O'Heney testified that he "was absolutely authorized to go [to MOCERT training] on [his] own time" and that he "[n]ever receive[d] discipline for attending MOCERT training on [his] own time." [2T35:13 thru 2T36:14; CP-17]

92. Chippendale testified that MOCERT training for the technicians was different than training for the operators. [1T144:14 thru 1T149:20] Chippendale testified that "[m]ost of the training that [we] did on the technical side of things was unscheduled, on [the technicians'] own time" and

"we would just coordinate amongst ourselves." Chippendale testified that "[the MOCERT technicians would] get together and . . . either exercise the equipment, or we take it off-site to -- for example, we would take the robot to a unique location, the beach, an exterior fire escape stairwell, just to drill on our own on those kind of unique systems . . . [o]r, we would just meet together at the prosecutor's office and take something out, put it together, make sure it works, put it back in, rotate batteries, things like that."

[1T144:17 thru 1T145:9] Chippendale testified that MOCERT technicians would engage in this training "[m]aybe two or three times a month, on average." [1T145:10-13] Chippendale also testified that "[Sergeant] Faulhaber was another technical operator, technical services guy" from NTPD that was on MOCERT and participated in this type of training.

[1T146:3-13]

93. Chippendale also testified that "[t]here were a few drills, during [his] short tenure with the [MOCERT] team, that [the technicians] were requested by the command to attend . . . [b]ecause they wanted to incorporate our aspect of things into whatever scenarios they were doing for that drill."

[1T145:14-20]

94. Chippendale testified that if he wanted to attend MOCERT training during his shift, he could request to have his

shift switched. [1T149:11-20; R-45; 4T259:7 thru 4T260:25] Chippendale testified that he was "[not] paid by [the] Township for [MOCERT] training" that "[he] did on [his] own time." [1T148:23 thru 1T149:2] Chippendale testified that he was "[n]ever told by anyone in [the NTPD] that [he] [was] not allowed to train for MOCERT on [his] own time" and that he was "[n]ever . . . disciplined for training on MOCERT on [his] own time." [1T145:21 thru 1T146:2]

95. Chief Hunt testified that he had no idea "that either Sergeant Faulhaber or Chippendale were engaging in training on their own time" and that he became aware that this was occurring "when they came forward where the PBA came forward claiming that we were sending them to training on their own time . . . with the initiation of this complaint." [3T243:19 thru 3T248:7; R-19] Hunt testified as follows regarding why he would not have permitted Sergeant Faulhaber or Chippendale "to attend any training on their own time . . . if he had been aware of it":

Q. Why not?

A. That's not the way it was set up. They were supposed to obtain permission. They have to ask permission while on our time to go to training, and they knew that, and you can't have that if they were injured, something could happen to them, we need to know if they are on our time working somewhere else.

[3T247:15 thru 3T248:7]

96. Captain McGhee testified "[w]ith regards to scheduling MOCERT training, generally, if an officer had MOCERT training and their shift was above the minimum, they would be permitted to go to the training"; and that after he became captain of operations, even "if the officer's shift fell below [minimum manpower] . . . it wouldn't be an automatic . . . no" because McGhee "would try to make accommodations by changing schedules for other officers to allow . . . different officers to attend training." McGhee testified that "[a]s long as [the schedule change] was agreeable to the other officer who was being affected," he would make an accommodation to allow officers to attend MOCERT training. [3T212:7 thru 3T213:16; 3T115:5 thru 3T117:10; 3T118:9 thru 3T119:10; R-36]

97. Captain McGhee testified as follows regarding NTPD's MOCERT members participating in training on their own time:

Q. You indicated you weren't sure about what your latitude was, did you have any indication or knowledge that most officers were being provided the opportunity to participate in MOCERT on their own time?

A. No.

Q. When did you learn that?

A. Early on. I don't recall the exact date or time, might have been in preparation for these proceedings, but at some point I did understand that that occurred.

Q. Considering your position and your role at that time, is that something you would have permitted?

- A. I would have asked. I would have sought, again, guidance. I sought guidance on a lot of different things. I don't think I could just give someone the authority to go. I think there is a lot of liability, lot of concerns that I would have, so I didn't feel comfortable making those decisions without any guidance.
- Q. Did you ever authorize someone to attend a MOCERT training or exercise on their own time?
- A. Not without reciprocating some time off, whether it's that day or the next day, or within a couple of days. I was always been big on, if you go here, then I'll give you here off, and that was just a process that I kind of became accustomed to.
- Q. So when you were doing the scheduling, they were never uncompensated for it, you would just have to switch their day off?
- A. Somewhere along the line there would have been an agreement, whether it's within a couple days, I didn't want to make a practice of if you go here today, I will give you off in a month or two, it was always something within a reasonable time frame. We still do that today.
- Q. Did Captain Mangold ever tell you that it was acceptable to allow people to attend training on their day off?
- A. I don't recall having that conversation with him at all.
- Q. Do you believe it's acceptable to allow an officer to train with a program on MOCERT on their day off?
- A. No.
- Q. Why not?
- A. I just think there is too much liability. I think if an officer gets hurt, I think, you know, without proper authorization coverage. You know, maybe four years ago, I wouldn't have thought so differently or I would have thought differently, but knowing a little bit

more now what it entails and what liability and exposure that, you know, the Township would have, I think it would be a concern.

[3T121:20 thru 3T123:22]

98. Captain McGhee also testified that if Captain Mangold told O'Heney that he could attend MOCERT training on his own time, O'Heney "would have the right to rely upon that representation from Captain Mangold." [3T183:15 thru 3T185:4]
99. I credit the testimony of O'Heney, Chippendale, Lieutenant Cox, and Captain McGhee that NTPD's MOCERT members were permitted to try-out and attend training on their own time. Chief Hunt knew, or should have known, about this practice based in part upon Captain Mangold's February 24, 2015 email. I also credit McGhee's testimony insofar as it indicates that as the new captain of operations starting in August 2016, he was learning about a new position as well as the ongoing policies/practices/procedures that had been implemented by his predecessor, Captain Mangold; and that McGhee was also re-assessing those policies/practices/procedures and raising issues or concerns with Chief Hunt (e.g., NTPD's liability if it continued permitting MOCERT members to attend training on their own time).

100. O'Heney testified that "[he] would . . . submit a [NTPD Training] [F]orm each time [he] attended MOCERT training"; that he "[he] would . . . sign the form"; and that upon submission "[a] supervisor" or "the training coordinator would sign the form." [2T23:21 thru 2T25:24; CP-15]
101. O'Heney testified that "[t]hrough discovery for this matter", the Township provided "a list of MOCERT events, training or call-outs, that [O'Heney] responded to or participated in during [his] time on the [MOCERT] team." [2T23:21 thru 2T25:5; CP-14] The list indicates that O'Heney attended MOCERT training on his own time on March 16, 2016; May 18, 2016; and July 6, 2016. [CP-14; 2T24:12 thru 2T25:5] For each of these dates, O'Heney signed and submitted a NTPD Training Form and a supervisor or the training coordinator counter-signed. [CP-15; 2T27:18 thru 2T32:2]
102. O'Heney testified that "[his] attendance at MOCERT training [did not] cause overtime." O'Heney testified that "if there was a manpower issue, [he] would not be permitted to attend MOCERT training . . . as [his] work shift" but "[he] would . . . go to the training prior to the start of [his] shift"; and that he "would [not] . . . be compensated for . . . training" on his own time. O'Heney also testified that "if manpower allowed, [he] would . . . be permitted to go to

training during [his] shift . . . or in lieu of [his shift], depending on the time of the training." [2T23:18-20; 2T35:6 thru 2T37:2]

103. O'Heney testified that in addition to training, MOCERT members also responded to call-outs. [2T37:3-6] O'Heney testified as follows regarding call-outs:

Q. So explain to us, if there's a MOCERT incident or there's an incident that MOCERT will be assigned to, I'm assuming you're notified?

A. Right. If an incident occurs somewhere in the County and the MOCERT team is activated, there's a process by which that gets vetted. But if the team is activated, then there was a phone -- a cell phone app that all the team members had. So wherever I was, not at work or at work, if there was -- if the team was activated, I would receive a page on my phone.

Q. And when you got to the page, what would happen?

A. As long as I was able to, I would call into headquarters to speak with whoever the shift commander was on duty, and I would advise them there was a MOCERT activation and request authorization to respond to that incident.

Q. Okay. And if you were given authorization to respond, what would you do?

A. Then I would respond to headquarters, I would collect my -- the rifle, my issued rifle, and I usually carried the rest of my protective equipment with me in my personal vehicle. I would transfer that usually to some kind of marked patrol vehicle. And from headquarters I would then respond to wherever the incident was.

[2T38:10 thru 2T39:14]

104. O'Heney testified that "[he] would . . . be compensated . . . [if] [a] call-out [occurred] during [his] time off" with "[c]ompensatory time" or "take it as cash in [his] next paycheck, if there was that option." [2T37:7-18] O'Heney testified that he could not say "specifically" how many call-outs he responded to during the time he was a MOCERT member, "but [he] [thought] less than 10 in the entire time [he] was on the team." [2T37:19-24]
105. O'Heney testified that he received about "12.25 hours" in recall time - i.e., compensation for MOCERT call-outs during periods when he was off-duty. [2T47:17 thru 2T48:10; CP-27] O'Heney testified that he received about "1 hour" in continuation time - i.e., compensation for MOCERT call-outs during periods when he was on-duty that extended beyond his shift. [2T48:11 thru 2T49:17; CP-27]
106. Chippendale testified that he participated in call-outs approximately 4-5 times while he was a member of MOCERT. [1T146:17 thru 1T147:6]
107. Chippendale testified that he received about "11 hours" in recall time. [1T147:7 thru 1T148:9; CP-27] Chippendale did not receive any continuation time. [CP-27; 1T148:9 thru 1T149:22]
108. In the Township's answers to interrogatories, the Township "acknowledge[d] that the amount of overtime paid in direct

relation to MOCERT participation [was] not extraordinary, but [the Township] did pay recall time as well as continuation time during the period" since January 1, 2014. [CP-26, Answer to Interrogatory No. 9; CP-27]

109. Captain McGhee testified that the amount of overtime paid "for just MOCERT itself" was "[not] exorbitant." [3T170:6-20] Bascom testified that "off the top of [his] head", he did not "have any idea how much of [the] total \$500,000 [worth of overtime paid out in the first half of 2016] was attributable solely to MOCERT"; however, he did testify that the overtime "was mostly a result of being short officers." [3T95:3 thru 3T96:12] Chief Hunt testified that "the MOCERT program itself . . . did [not] generate significant amounts of overtime." [4T54:23 thru 4T56:2]
110. O'Heney testified that he could not recall "ever [being] given authorization to attend [a] pre-planned [security] event[]" with/for MOCERT, although he "could . . . have gone to one of these events on [his] own time." [2T21:12 thru 2T23:16; CP-16; R-52]
111. Chief Hunt testified that "O'Heney knew, and all my operators knew, that was one thing with MOCERT, we [were] not going to send them out to do other people's work"; that "MOCERT . . . was to handle important calls." Hunt testified that "[he] never sent anyone [out on pre-planned

MOCERT security events], and [he] wasn't going to, and everyone knew that, and that's not what [a] MOCERT operator is supposed to be assigned to do . . . [so] [he] wasn't allowing that." [3T261:2 thru 3T262:23; R-52]

112. Chief Hunt monitored NTPD officers' performance while they were MOCERT members by periodically asking for information, feedback, follow-up, and/or assessments. For example:

-on June 1, 2015, Hunt sent an email to Captain Mangold that asks: "Has PO O'Heney filed police reports on his call outs to MOCERT" [R-11];

-on September 4, 2015, Hunt sent an email to Captain Mangold that asks: "I want you to provide me with the monthly statistics for the past two months on PO N. Taylor, PO B. Maher, and PO O'Heney . . . [and] [h]ave this done immediately" [R-20]; and

-on December 3, 2015, Hunt sent an email to Captain Mangold that asks: "Do you have the most recent reports from the past deployments" [R-29].

113. Chief Hunt testified that "[d]uring this initial period with MOCERT", he "[i]ndirectly . . . would speak with [his] captains and ask how officers [were] doing . . . how is it affecting us overall, and [he] would have conversations with [his] patrol captain and [his] administrative captains about it." Hunt testified that he "wanted to see how the officers were working with their commitment to MOCERT and their commitment to the Township"; that he "wanted to see what kind of statistics they were putting up, what their numbers

were overall in the course of their duties as police officers." Hunt noticed "that . . . O'Heney's stats had gone down on occasions[,] [that] Taylor got promoted to detective bureau[,] and Maher['s] statistics . . . were very good." [3T238:17 thru 3T240:5; 3T248:13 thru 3T250:17; 4T44:10-24; R-11; R-20; R-29]

114. On June 22, 2015, Michael Pasterchick (Pasterchick) sent an email to "Monmouth County Police Chiefs" (including Chief Hunt) regarding the "MOCERT Uniform Policy." [R-12] Chief Hunt testified as follows regarding the June 22, 2015 email and his understanding of how MOCERT was to be activated:

- Q. And what is this email attempting to establish?
- A. It's, basically, explaining an incident command when MOCERT is activated and they come into our town, it's basically, it goes through me, IRI, if I'm incident commander, and then we do a unified command with the MOCERT commanders at a specific point.
- Q. What was your understanding of how MOCERT was to be activated at this point in time?
- A. That's the way it was told to me when I came in. I met with the command of MOCERT before I allowed Rob O'Heney to go, and he explained to me I had total control of it, I could pull an officer back whenever I wanted. If I wasn't happy with the program, I could step back with it, and it's just that, you know, we work together as a team, if I needed them. It would activate through me, and only me, to activate MOCERT in my town, so I would have to request them.

- Q. And did you ever explain that activation process to the officers under your command?
- A. Yes, it was put out to all of my -- all my commanders.
- Q. When you say all of your commanders, do you mean just the command staff or the --
- A. There was a directive by me somewhere, I don't remember how, saying that everyone, also all supervisors know, and should have known, it goes through the chief of police.
- Q. But we were unable to produce anything earlier than the December 2016 memorandum on that, correct?
- A. That's correct.

[3T240:7 thru 3T241:25; 3T242:1 thru 3T243:7]

115. On December 3, 2015, Captain Mangold sent an email to (among others) Sergeant Faulhaber and Lieutenant Cox as well as NTPD officers Chippendale, O'Heney, and Maher, that provides:

Supervisors,
Sgt. Faulhaber and PO Chippendale are assigned to MOCERT's Technical Unit. If they are activated for an out of town assignment, Captain Mangold will be notified for approval. In addition they are required to complete a police report detailing their assignment and the results of their activities. If there is already a case number for the call through another Neptune Township (MOCERT) Police Officer, they will complete a supplement report. All reports will be completed prior to any overtime being approved.

[R-29]

116. Chief Hunt testified that "all of the [MOCERT] officers were aware that they needed to seek the approval of Captain

Mangold prior to activating for a MOCERT call"; that all of the MOCERT operators and technicians "knew that going into the operation." [3T253:9 thru 3T255:17; R-29]

117. On February 12, 2016, Chief Hunt sent an email to Donald Kronenwetter (Kronenwetter) regarding his concerns about how MOCERT members were being utilized for call-outs that provides in pertinent part:

Hi Don, last night I had requests from all my MOCERT officers to respond to Atlantic Highlands. I was under the impression they were assigned out to different teams and it would be rare all operators would be needed at one time. When you get time can you call me to clarify the need for three officers and two technicians being sent out on a barricaded person.

[R-39]

118. Chief Hunt testified that "[he] was informed by MOCERT before assigning these guys that . . . [there] would never be a time that all [of] his MOCERT operators would be sent to one call" because "[t]hey were supposed to be on teams and distributed off of teams." In response to Hunt's email, Kronenwetter "explain[ed] that [MOCERT] changed the way they were doing business and forgot to tell [Hunt] about it." Hunt explained that this change "[ran] counter to what [he] expected." [3T255:19 thru 3T257:4] Hunt testified as follows regarding his concerns with this change to MOCERT:

Q. Did you have any problem with that?

- A. Sure, I had a problem with that. Because I had three MOCERT operators all assigned to the patrol division, and then all of a sudden now I have three people calling wanting to be sent to a MOCERT call, and that wasn't supposed to happen. It was only supposed to be one person called out off a squad, not three or five people.
- Q. Did this cause you any concerns with continued participation in MOCERT?
- A. That was -- that caused me concerns because they changed, because it was going to tax my scheduling that much more.
- Q. And when officers were called out for MOCERT deployments, who paid for them?
- A. Well, they were working, they are on the [Township's] dime. If off-duty, it was on the [Township's] dime to bring them in on overtime and send them.
- Q. And for that deployment in Atlantic Highlands, who do they reach out to for the request for deployment?
- A. MOCERT to activate notifies the operators. The operators call in to request permission from the shift commanders to go. The shift commander needs to go up the chain of command for authorization to send anyone, so that would be to Captain Mangold who, in turn, would notify me.
- Q. And did that occur in this instance?
- A. I think it did, because this is my questioning the next day and why was this activation requested.

[3T257:5 thru 3T258:9; CP-31; 3T56:25 thru 3T60:12]

F. The PBA's August 15, 2016 Letter

119. In 2016, the PBA membership began to raise issues concerning NTPD. A majority of PBA members would raise concerns about important issues to President Blewitt and Vice President

O'Heney on a regular basis at PBA meetings and through telephone calls and text messages. Safety was the main concern; however, PBA members also had concerns regarding the allocation of manpower, the use of sergeants to fill patrol zones, increasing responsibilities, and radio communications. [1T47:24 thru 1T50:9; 2T52:18 thru 2T56:21]

120. Although multiple PBA members raised issues concerning the radios/radio communications, Blewitt, O'Heney and Lieutenant Cox all testified that Chippendale was the most "vocal"/"informative" about these issues. [1T49:9 thru 1T50:9; 2T55:2 thru 2T56:21; 1T188:21 thru 1T190:5]
- Chippendale had a particular interest in the technology aspect of the radios/radio communications based upon his prior employment as a public safety tele-communicator for the Monmouth County Sheriff's Office. [1T138:3 thru 1T139:7] Chippendale identified "some pretty glaring issues" about the new radios and raised his concerns with the PBA "almost immediately from when [they] got put out to us." [1T151:24 thru 1T152:6] Chippendale testified that "there were pretty much two main [issues]" - i.e., "the operations of the dispatch itself that was creating officer safety concerns" and "the system and physical equipment, the radio itself . . . wasn't adequately working in a lot of areas at a lot of times." [1T152:7 thru 1T153:16]

Chippendale also testified that "[t]here were often times where the [radio] system would either completely fail, or be insufficient for us to communicate with each other or dispatch" and that this "was often a daily occurrence."

[1T150:2 thru 1T151:23]

121. Chippendale testified that he has "never been very good at keeping [his] opinions to [him]self" and that he raised his concerns about the radios/radio communications with "anybody that would listen to [him]" including superior officers "if [he] was asked." [1T153:17 thru 1T154:4]

122. Chippendale testified that he "had heard . . . that [his] outspokenness [about the radios] was related to some type of friendship [he] had with someone who sold Motorola" and that "[he] and this non-existent person were upset that [the Township]" purchased Tait radios. [1T154:5-15] Chippendale testified that he does not have a friend that works for Motorola; that he does not have a friend who lost a contract for Motorola radios; and that he does not have a friend with any affiliation with any of this at all. [1T154:16 thru 1T155:21]

123. In order to address the concerns of the PBA membership, the PBA sent a letter dated August 15, 2016 to then-Director Bascom and Chief Hunt. The letter was signed by PBA President Blewitt, PBA Vice President O'Heney, and FOP

President Cox, all in their capacities as union representatives. O'Heney wrote the letter. [CP-1; 1T50:10 thru 1T51:3; 1T52:16-22; 1T186:15 thru 1T188:20; 2T56:22 thru 2T58:3]

124. Blewitt testified that the purpose of the PBA's letter was "hopefully to open a dialogue with the administration, and address the issues and concerns of [the PBA] membership." [1T51:4-8; 2T63:3-10] Blewitt testified that the letter accurately reflected the concerns of the PBA membership. [1T53:10-14; 2T58:4 thru 2T63:1]

125. O'Heney testified that "[w]e were receiving so many complaints, we were really put in a position where not delivering the complaints to the administration in a concrete form was not only -- it was the right thing to do to deliver the information, but also we felt we had an obligation, a legal obligation, or a fiduciary obligation to deliver that information." [2T56:22 thru 2T57:9] O'Heney testified that the PBA's "[p]rimary concern[] and motivation[] . . . [was] [t]he safety of our officers, of our union members." [2T58:15-25]

126. O'Heney testified as follows regarding the PBA's letter:

. . . [W]e knew that delivering this information to our bosses more or less was, I guess, kind of a tricky thing. You're delivering criticism to the people in charge of you. So we wanted to -- I wanted to be sure that it wasn't taken in a disparaging or

negative context, that it was meant to be constructive, it was meant to have our officers' safety as the paramount concern and that we wanted to address these issues. It wasn't about finger pointing.

[2T59:2-12]

127. The PBA's August 15, 2016 letter provides in pertinent part:

The officers of Neptune Township PBA Local 74 are seriously concerned for our safety and the safety of the citizens of Neptune Twp. This concern is the manifestation of multiple factors that over the past several years have created an increasingly dangerous work environment for the officers assigned to the patrol division. As a preamble, Local 74 would like to make it clear that this letter is not meant in any way to disparage previous decision-making or create a tenuous dynamic between our members and the administration of the Neptune Twp. PD. It has always been and will continue to be the mission of Local 74 to serve and protect the citizens of Neptune Twp. while sending the officers sworn to do so home safely to their families after every shift. It is with this mission in mind that we are compelled to express our concern regarding factors we consider to be posing undue risk to the citizens and police officers of Neptune Twp.

First, the Neptune Twp. PD is inadequately staffed. The workload placed on patrol officers has increased and the actual manpower on the road to handle this workload has decreased. We know the population of Neptune Twp. is increasing despite a lack of current census data to confirm this and the number of businesses making calls for service (i.e., Walmart, Home Depot, Holiday Inn Express, Wawa) also continues to increase without a commensurate increase in the number of patrol officers to answer these calls. This inadequate staffing coupled with a general aversion to pay overtime to officers has resulted in dangerously low patrol

manpower on a nearly constant basis. Officers are also routinely denied requests for time off if approval would generate overtime to compensate. When in response to recent events we have seen Asbury Park PD paying officers overtime in order to augment manpower for the purpose of officer safety, it is concerning that in Neptune Twp. overtime is avoided, even to properly staff a patrol shift or afford officers their right to time off.

Second, the amount of superfluous and time-consuming administrative tasks required of patrol officers on a day to day basis continues to increase without any increase in manpower. These tasks include completing daily activity ledgers with multi-point vehicle and equipment inspections, voicemail box review, PowerDMS review and sign-off, PowerDMS and NJ Learn courses, and report writing, interviewing, and evidence inventory for minor calls for service (non-life-threatening First Aid, Alarms, motor vehicle stops, non-indictable shoplifting etc.). These tasks cause an undue burden on an officer's time that is best spent patrolling his/her zone during a given shift. These tasks also cannot realistically be completed without using the patrol vehicle MDT's. Forcing officers to have their attention on a computer terminal instead of their surroundings while on patrol creates an unnecessary danger.

Next, available manpower within Neptune PD is inefficiently allocated to full-time assignments that we believe are not mission critical. The Internal Affairs Bureau, Street Crimes Unit (SCU) and on-loan officers (DEA, MCPO) are assignments that eliminate at least six patrol officers in total not including four supervisors and temporary assignees. These supervisors/officers could be assigned to the patrol division, especially during times of hardship, which would augment the available patrol manpower by twenty percent, better serving Township

residents and making day-to-day patrol operations safer. Until the patrol division manpower is at a safe and appropriate level, full-time specialized units and assignments create more danger than benefit. Also, whenever there is a shortage of manpower on patrol, the patrol shift has been operating with less manpower instead of bringing in officers on other shifts to properly staff the short shift. With the presence of more patrol sergeants than ever before, those sergeants are routinely being assigned to patrol zones to compensate for a lack of patrol officers. However, few of these sergeants man their assigned zone appropriately, whether by choice or due to the demands of their collateral duties. More often than not they are inside headquarters, providing a slow if any response to calls for service or requests for backup. For sergeants to act as zone officers they must actually fulfill the responsibilities of a zone officer by answering calls and backing up other officers. In current practice, assignment of patrol sergeants to zones is a paper solution not an actual solution.

Lastly, the quality and effectiveness of radio communications have continued to degrade over the last four years since the switch to county dispatch. Calls for service are repeatedly mishandled. They are dispatched late and with limited or inaccurate information. When officers request backup, information, warrant checks etc., they are often waiting an inordinate amount of time leaving them exposed and in dangerous situations longer than necessary. Additionally, the physical radio equipment used by the police department has long been substandard. Even with the implementation of the new digital encrypted system officers are still experiencing dead zones, a significant delay between the act of keying up the radio and the ability to actually transmit a message, as well as a significant number of failed transmissions for unknown reasons. The consensus of Local 74 is that the new

radio system has created more danger for officers than its encryption may potentially mitigate.

In summary, it is the position and most respectful request of Local 74 that the Neptune Twp. Police Department increase its manpower by at least 15% to 85 full-time sworn officers and implement a 10-hour schedule. Additional officers will allow for the safe and effective deployment of patrol personnel to calls for service while maintaining the department's ability to staff full-time specialized assignments. A 10-hour schedule will create a shift overlap that will put more officers in service during peak hours of activity. Also, Local 74 respectfully requests an emergent remedy to the current radio communication system as well as a meaningful review of the effectiveness of MCSO Communications as our dispatcher. The consequences of even one failed or mishandled radio transmission could be life or death.

[CP-1]

128. O'Heney summarized the content of the PBA's letter as follows: the first paragraph of the letter is a disclaimer indicating that the primary concern and motivation for writing the letter was officer safety [2T58:11 thru 2T59:15]; the second paragraph of the letter concerns staffing [2T59:16-22]; the third paragraph of the letter concerns the increasing number of administrative tasks that officers were being asked to perform and a lack of time or staffing to compensate for the increasing workload [2T59:23 thru 2T60:19]; the fourth paragraph of the letter concerns ancillary assignments taking officers away from patrol and

related manpower issues [2T60:20 thru 2T61:16]; the fifth paragraph concerns radios/radio communications and related issues, including those raised by Chippendale [2T61:17 thru 2T63:2; 1T152:14 thru 1T153:16].

129. Chief Hunt received the PBA's letter on August 15, 2016 and responded to it the next day. [4T98:6-13; CP-2] Then-Director Bascom was on vacation when the letter was sent; he received the letter upon his return, although Hunt had contacted and advised Bascom about the letter before he returned. [3T23:4-25; 3T63:21 thru 3T64:15] Hunt and Bascom both recognized the letter as a union complaint; both also acknowledged that the letter was signed by PBA President Blewitt, PBA Vice President O'Heney, and FOP President Cox. [3T64:16 thru 3T65:24; 4T98:14 thru 4T99:25; CP-2]
130. Bascom testified that the Township's Business Administrator, Vito Gadaleta (Gadaleta), had also made him aware "that the [PBA's letter] was spoken of at a public meeting while [Bascom] was on vacation"; that "a community activist . . . who had some issues with the leadership of the police department . . . had a copy of a letter from the PBA and had raised a letter at the public meeting in an attack on the Chief." [3T24:1-22; 3T71:24 thru 3T73:19] Bascom testified as follows regarding discussion of the letter at the Township Committee meeting:

- Q. Now, you characterized the letter as inappropriate and poorly timed, why is that?
- A. We were in [the] midst of negotiations, we had just begun the negotiations, we had just reviewed, basically, the process by which we agreed to negotiate in regard to not releasing information to the press yet, and not having individual meetings, and having a certain number of meetings before we determined impasses or before we determined that no new items would be placed on the table before each other in negotiations. And then weeks later this letter or, actually, I believe, there may have been an earlier more inflammatory version of this letter that was provided to Mr. Golub that was read at the Township meeting.
- Q. And who is Mr. Golub?
- A. Mr. Golub is a former deputy mayor of Neptune Township, community activist, very involved in -- he's very anti-administration in general in town.
- Q. His appearance at the Township Committee Meeting with the earlier version of the letter, did that cause any issues with the Township Committee and the [NTPD]?
- A. I don't recall whether Nick Williams was the mayor or police liaison at the time, but he was upset by the letter and wanted to know what we are doing to address the issues.
- Q. When you say upset, do you mean he was angered by the letter or concerned about the ramifications?
- A. Concerned.
- Q. Did he task you with any specific agenda to address that letter?
- A. He just asked me for feedback.
- Q. And is that what this letter to him is?
- A. Yes, it is.
- Q. You indicate here that you agreed to meet with the PBA regularly and labor management meeting[s] to avoid such accusations in the future, can you tell us how that came about?

- A. We agreed that releasing the letter publicly was not the proper way to maintain good employer management relations, that it's best to discuss the issues face-to-face, and we all agreed that labor management meetings would go forward from there.

[3T46:13 thru 3T48:7; CP-7]

131. Bascom testified that although he was uncertain of the date of the Township Committee's meeting at which the PBA's letter was raised during public comment, Bascom "[knew] it was while [he] was on vacation . . . and . . . before Chief Hunt notified [him]"; and that it was "absolutely not possible" that "Mr. Golub had not raised the issue prior to September 1st." [3T97:13 thru 3T101:24; 3T104:4 thru 3T105:11]

132. I take administrative notice^{5/} that the Township Committee's August 8, 2016 Meeting Minutes reflect the following:

PRIVILEGE OF THE FLOOR/PUBLIC COMMENTS

* * *

Michael Golub, Cliffwood Drive, stated he was going to make a comment regarding the current state of affairs in regards to the Police Department. He stated he was disturbed with Mr. Bishop's comments in the paper with him saying that we should let it go through the courts. He stated the reason why it got to the court system was because we have people employed that are not getting relief or when they do complain the bolts get tighten[ed] down even tighter. There was no give and take so they decided to take those matters

^{5/} See N.J.A.C. 19:14-6.6(a) ("[n]otice may be taken of administratively noticeable facts").

with private representation and filed complaints. If it had been done respectfully and responsibly on a local level they would not have the argument to say let it go through the court system. He stated this was their cross hair and personal interrogatory on the line. He stated there was enough interest from the State Federal and Regional lawmakers that something smell rotten in Denmark right here in Neptune and particularly with the Police Director who have had people in his life stand up and vouch for him an[d] discuss his integrity and he has fallen short as the Police Director of this Township. He stated there was open acts of discrimination and bias and bigotry against people in this town, He stated they should be proud of the assemblage of people sitting on the dais because they represent everyone.

133. I also take administrative notice that the Township Committee's August 22, 2016 Meeting Minutes reflect the following:

PRIVILEGE OF THE FLOOR/PUBLIC COMMENTS

* * *

Mr. Golub stated he had a letter that the PBA and FOP sent to Mr. Bascom and Chief Hunt regarding their concerns and that they did not feel safe and there were issue[s] with man hours. He also stated he felt that they did not have enough police officers.

134. Blewitt testified that "[w]ord of the letter floated throughout [NTPD] quickly . . . [a]nd, [he] was pulled aside by several supervisors explaining that the Chief was extremely upset about the letter." [1T57:16-24] Lieutenant Cox also testified that "the Chief and Director . . . weren't happy about [the letter]" and he heard through

"rumor mills . . . [t]hat they were very upset with [the PBA and FOP]." [1T190:6-23]

135. Bascom testified that he was "a little surprised" by the letter and that he was "disappointed." [3T24:23 thru 3T25:4; 3T76:2-7]

136. Chief Hunt testified that he was "[not] even momentarily angry at the PBA for issuing [the] letter"; rather, Hunt was "taken aback, shocked and surprised when [he] got [the] letter." [4T43:13-21; 4T6:1 thru 4T13:20] Hunt also testified that he did not carry a grudge against the PBA for having issued the letter. [4T43:22-25] Hunt testified as follows regarding his feelings about the PBA's letter:

Q. Can you tell me what your reaction was when you first received that letter?

A. When I first received it, I was kind of shocked that this letter was presented the way it was, mailed to us or sent to us, and the fact that, you know, we had been meeting with the PBA and FOP previously, and then I wasn't told about them having these complaints. I mean, we discussed scheduling, we discussed a lot of things prior to all of this, and then just to get this letter sent to us like this, I was shocked that it was sent.

Q. Now, when you say you had been meeting with the PBA previously, are you talking about the contract negotiations that were ongoing or other meetings?

A. No, I don't do contract negotiations. We met, talked, discussed scheduling and other issues that came up as we tried to meet because the PBA really didn't like the current schedule that they had, and one of the major complaints was trying

to go to a different schedule, but they never presented a schedule that would work for us.

- Q. So those meetings had been ongoing between, I guess, management and the PBA?
- A. Yes.
- Q. For how long?
- A. We meet probably quarterly since 2015.
- Q. Now, only a small portion of this letter deals with the 10-hour schedule. A larger concern in this letter appears to be manpower issues. Was that a new complaint?
- A. That was talked about also. It's a -- scheduling and manpower kind of go with each other, saying that their complaint was that the officers couldn't get time off because there was never -- it was only minimal manpower allowed, it wasn't extra people on the shift, so they couldn't get off.

[4T6:1 thru 4T13:20]

137. On August 15, 2016, Chief Hunt sent an email to Captain McGhee regarding the PBA's letter that provides:

Captain McGhee today I received a letter from the PBA and the President of the FOP making a complaint against the supervision of the police department. They indicate the Sergeants when assigned to a zone fail to answer calls, and when they do, they respond from headquarters. They state few of these Sergeants man their assigned zones appropriately, whether by choice or due to the demands of their collateral duties. More often than not they are inside headquarters providing a slow response to calls for service or requests for backup. I have to assume the Lieutenants or Shift Supervisors are failing to supervise. Road Sergeants are assigned to the road. Sergeants assigned to a zone answer all calls in the assigned zone. Do we have a communication problem with the supervisors of these shifts. Address this

with the supervision of these shifts and correct this complaint.

[R-54; 3T269:3 thru 3T271:12]

138. Chief Hunt testified that he sent the August 15, 2016 email to Captain McGhee because he wanted to "immediately . . . start looking into the allegations made about [his] sergeants" with "[his] patrol captain." [4T14:6-15; 4T16:3-7]
139. On August 16, 2016, in response to the PBA's letter, Chief Hunt sent a memorandum to Blewitt and O'Heney. Hunt requested that Blewitt and O'Heney provide him with more specific information (e.g., names, dates, times, shifts, witnesses, etc.) to support the PBA's assertion that only a few of the sergeants assigned to patrol zones were manning their assigned zone appropriately and that most were inside headquarters providing slow if any response. [CP-2]
140. Chief Hunt testified that "the safety of [his] officers" is "the utmost concern"; that he sent the August 16, 2016 memorandum to Blewitt and O'Heney in order "to address a deficiency immediately, especially when it comes to a complaint on officers not doing their job" because "[w]ithout the information . . . requested from the PBA, . . . it [would not] be possible . . . to investigate these [allegations]." [4T13:21 thru 4T17:10]

141. On August 19, 2016, in response to Chief Hunt's August 16, 2016 memorandum, O'Heney drafted and sent an email (which was electronically signed by O'Heney and Blewitt) to Captain McGhee, copying PBA President Blewitt; McGhee forwarded the email to Chief Hunt. [CP-3; 1T55:11 thru 1T56:16; 2T64:7 thru 2T65:10] O'Heney explained that the PBA's letter contained "general complaints that we[re] fielded from . . . members"; that the PBA's letter "represents our fiduciary obligation as PBA officials to advise you of the concerns of . . . members"; and that the PBA "was unable to provide the documentation [Hunt] requested to support [the PBA's] claim" [CP-3; 2T65:11-23] O'Heney's response also states that "[i]t was never the PBA's intention to make these issues antagonistic; rather it was raised out of a legitimate concern for the safety of all our officers." [CP-3]

142. Blewitt testified that O'Heney sent the email to Captain McGhee, rather than Chief Hunt, because "[i]t was told they wanted all documents to go through the Captain before going to the Chief"; "[c]hain of command." [1T56:6-13; CP-3]

143. Blewitt and O'Heney both testified that Chief Hunt had not received the letter in the spirit in which it was intended. [1T56:17 thru 1T58:6; 2T65:11 thru 2T66:23] Blewitt testified that the PBA "clearly asked for a meeting to

discuss these issues, and rather than agreeing to sit down and discuss, [Hunt] . . . required us to provide him with documentation and evidence." [1T57:16 thru 1T58:6]

144. On August 23, 2016, in response to O'Heney's August 19, 2016 email, Chief Hunt sent another memorandum to Blewitt and O'Heney. Hunt again requested that Blewitt and O'Heney provide him with more specific information (e.g., names, dates, shifts) to support the PBA's assertion that only a few of the sergeants assigned to patrol zones were manning their assigned zone appropriately and that most were inside headquarters providing slow if any response. [CP-4; 4T17:11 thru 4T19:19; R-57]
145. On August 24, 2016, Blewitt sent an email to Chief Hunt and then-Director Bascom "apologiz[ing] for the recent unauthorized public airing of our mutual business"; specifying that "[i]t was and is [the PBA's] position that this is an internal matter between the PBA and [NTPD] and the Town[ship] and was not for public consumption"; and reiterating that it was not "[the PBA's] intent to cast [aspersions] or create an adversarial dynamic between the PBA and Department and Town." [CP-5]
146. Blewitt testified that he sent this email because "[t]he aggression increased"; "the [PBA's] letter was now public, and we were getting a lot of inquiries about it . . . [a]nd

. . . the Chief and Director were extremely upset that the letter was aired publicly." [1T60:3 thru 1T62:23; CP-5] Blewitt testified that "the general atmosphere around [NTPD] concerning the [PBA's] letter at that time . . . was contentious"; the PBA "[was] well aware that the Chief was upset, as well as the Director." [1T61:11 thru 1T62:24] Blewitt also testified that "[he] reached out to the PBA state president to address the matter with him and to keep him aware . . . because [he] was afraid of retaliation." [1T61:18-22]

147. Blewitt explained that "[the PBA] did not air [the letter] publicly" and "the executive board did not leak [the] letter." However, Blewitt conceded that he "emailed [the letter] to the rest of [the PBA] membership to allow them to know that the matters of their concern[] were being addressed" and he "[did] not know if one of [the PBA] members sent it to somebody else, or how it was leaked." Blewitt also confirmed that "[the leak] was addressed at [a PBA] meeting, [but] nobody took ownership for it." [1T60:23-25; 1T61:8-11; 1T62:25 thru 1T63:25]

148. Lieutenant Cox testified that Chief Hunt and then-Director Bascom "weren't happy" about the PBA's letter; "they were very upset with [the PBA and FOP]." [1T190:6-23]

149. Chief Hunt admitted the following regarding the PBA's letter:

- Q. So the letter was criticism of how you ran the department, and you speak with Bascom pretty regularly, Director Bascom, right?
- A. Well, he was the Police Director. Yes, he was the Police Director of the town.
- Q. And he felt you were being attacked by the letter?
- A. That's what he wrote.
- Q. That's what he wrote, right? And you also felt like you were being attacked by the letter, correct?
- A. Well, I'm sure this -- like I said, I wasn't involved in negotiations, but all these things that were brought up were scheduling, manpower. All that was part of the reason they wrote this letter, make it public to -- negotiations were coming up. So yeah, I was attacked. And they want to bring up, you know, I had disciplined a lot of PBA officers. I had four officers out on suspension. Yeah, so the unions had motive to do what they wanted to do. Was I being attacked? Why not. I mean, they had every reason to do so.
- Q. And you were being attacked by O'Heney who had little more than five years on the department at the time, right, and Blewitt who had maybe eight years at the time?
- A. You are calling it an attack. It was a letter --
- Q. You just said it was an attack, sir.
- A. You asked me about it. I'm telling you right now I didn't take it as an attack. The union was coming here making their issues basically saying they didn't want to do their job.
- Q. So you just had no problems with the union writing a letter criticizing the department?
- A. I wasn't happy with the union with that. I wasn't happy with either union. I

wasn't happy - there's nothing I can control. He made it public.

[4T107:24 thru 4T109:16]

150. Captain McGhee testified that Chief Hunt and then-Director Bascom "weren't happy" about the PBA's letter. [3T209:15-20]
151. Bascom testified that "[t]he Township considered filing an unfair practice charge based on the [PBA's August 15, 2016] letter" but ultimately decided not to do so. [3T109:11 thru 3T110:7]
152. In August 2016, in addition to receiving the PBA's August 15, 2016 letter, NTPD was in the news "quite a bit." [4T102:14-18; 3T73:24 thru 3T76:1]
153. Chief Hunt confirmed that in August 2016 "there were numerous news articles" about "the [upcoming] sentencing of Phil Seidle (Seidle)," a NTPD officer who "murdered his wife in Asbury Park while he was off-duty." [4T102:19 thru 4T104:14; 3T74:10 thru 3T75:23] Seidle's sentencing was an agenda item for the September 15, 2016 NTPD Command Staff meeting. [CP-8]
154. Chief Hunt also confirmed that he "had a cell block death, too, at that time" in/around August 2016. [4T148:5-18; 4T154:10 thru 4T155:4]
155. Chief Hunt also confirmed that "there . . . were three lawsuits filed in 2016 naming [him] as a defendant" that

"were in the news . . . all along" including in August 2016.

[4T104:16 thru 4T105:18; 3T74:5-9; 3T75:18-20] Hunt testified that the three lawsuits referenced were filed by NTPD officers Christine Savage (Savage), Elena Gonzalez (Gonzalez), and then-PBA President Kyheem Davis (Davis).

[4T104:16 thru 4T105:9]

156. Captain McGhee testified concerning the lawsuits that were filed by Savage and Gonzalez. McGhee acknowledged that Savage and Gonzalez filed multiple complaints, with the first set of complaints in 2013 and the second set of complaints in 2016. McGhee testified that in the 2013 lawsuits, then-NTPD officers Savage and Gonzalez sued the Township, the Chief, the Director, and McGhee; and that the 2013 lawsuits were settled, with one term of the settlement being that the Township "provide certain specific training" to both Savage and Gonzalez. [3T186:16 thru 3T189:3]
- McGhee also acknowledged that in the 2016 lawsuits, then-NTPD sergeants Savage and Gonzalez sued the Township, the Chief, the Director, McGhee, and other captains; that the 2016 lawsuits alleged that the Township violated the prior settlement by failing to provide the agreed-upon training; and that the 2016 lawsuits also alleged violations of civil rights and retaliation. [3T186:16 thru 3T189:3; 3T147:15 thru 3T163:3]

G. September 1, 2016 Meeting

157. On September 1, 2016, PBA President Blewitt, PBA Vice President O'Heney, and FOP President Cox met with then-Director Bascom, Chief Hunt, Captain McGhee, and Captain Gualario to discuss the issues specified in the PBA's August 15, 2016 letter. [CP-6; 1T10:12-16; 1T64:5 thru 1T66:4]
158. Captain McGhee testified that the meeting was contentious - i.e., "[t]here w[ere] some accusations that were made against the command staff and the [C]hief and the [D]irector at the time"; "[it] was upsetting . . . for everyone involved in the manner in which those allegations were surfaced because it was kind of aired out in public before we were able to address anything, so there was definitely some disagreement to what was going on." [3T174:3 thru 3T175:10] McGhee testified that "[v]oices were raised, people were upset . . . [t]here was some loud voices back and forth across the table." [3T175:19 thru 3T176:1]
159. Captain McGhee described the meeting as "uncomfortable to start" so, in order to cut the tension, he made a joke/comment that he thought "would help calm the room down, and [he] felt it was effective." [3T198:22 thru 3T199:25] McGhee testified that he made a joke about the author of the PBA's letter; something to the effect of "I need a thesaurus to read the letter because of the words that O'Heney used."

[3T200:1 thru 3T201:20] McGhee testified that the letter was "written with some eloquence"; that based upon his conversations with O'Heney and reading O'Heney's reports, McGhee knew that O'Heney had "a hand on vocabulary that other officers don't necessarily have." McGhee testified that "it was quite obvious that [the PBA's letter] would be something authored by . . . someone with some intellect."

[3T176:22 thru 3T177:14]

160. Captain McGhee acknowledged that Chief Hunt and then-Director Bascom were in attendance at the meeting when he made the joke, and that he was/is sure both Hunt and Bascom heard the joke. [3T201:21 thru 3T202:17]

161. O'Heney testified that the issue of who wrote the PBA's letter came up at the meeting when "Captain McGhee made a joke that it was obvious that [O'Heney] was the author of the letter because of the language and the vocabulary used." O'Heney conceded that he "[has] a reputation for using big words." [2T68:14-25] O'Heney testified that he confirmed that he was the author of the PBA's letter. [2T69:1-4] O'Heney also testified that Chief Hunt and then-Director Bascom were both present in the room, listening, and involved in the conversation when O'Heney confirmed that he was the author of the PBA's letter. [2T69:5-17]

162. Blewitt testified as follows regarding Captain McGhee's joke:

While trying to explain ourselves and go over the matters, Officer O'Heney explained to them, you know, that he wrote the letter and, again, its purpose. And there was a joke, even, that - - "Of course we know Rob O'Heney wrote the letter. I had to use a thesaurus . . .", or something to that nature, "to look up some of the words . . ." because it was very wordy - - and it was, you know, evident that Rob O'Heney penned the letter, but it was also sent on behalf of the PBA.

[1T66:16 thru 1T67:2]

163. Blewitt testified that Chief Hunt and then-Director Bascom were both present during the discussion of who authored the PBA's letter, including when O'Heney confirmed that he was the author. [1T67:3-19] Blewitt also testified that Hunt and Bascom "both knew that . . . O'Heney had written the letter." [1T67:13-19]

164. Lieutenant Cox testified that Captain McGhee made a joke about "need[ing] a thesaurus to figure out some of what was written in the letter." [1T190:24 thru 1T192:14] Cox testified that the issue of who wrote the PBA's letter was raised at the meeting, and "it became apparent that O'Heney wrote the letter." [1T192:8-14] Cox also testified that Chief Hunt and then-Director Bascom were both present when it became apparent that O'Heney had written the letter. [1T192:15-20]

165. Bascom did not recall any discussion about the author of the PBA's letter and testified as follows:

- Q. Do you recall any jokes being made at that September 1st meeting indicating that Officer O'Heney had written the letter?
- A. I don't recall that.
- Q. Is it possible that that occurred?
- A. It is possible. I don't recall that.
- Q. Would that hold any significance for you if it was true?
- A. No, it would not.
- Q. Does it matter to you who authored the letter itself?
- A. No, it does not.
- Q. Did it matter to you at the time who authored the letter at the time?
- A. No, absolutely not.

[3T42:13 thru 3T43:2; 3T85:2-12]

166. Bascom testified that he believed the PBA's letter "was a collaboration of those who signed it" and he assumed "O'Heney wrote the letter, based on preparation for th[e] [hearing], but never during th[e] process did anybody tell [him] that O'Heney wrote [the] letter." [3T85:13 thru 3T86:5] Bascom conceded that he was aware that O'Heney signed the letter. [3T86:6-8]

167. Chief Hunt testified that he "[didn't] remember hearing the joke" about O'Heney writing the letter; he recalled "hearing Blewitt tak[e] credit saying that he was responsible for the letter, and . . . that he's responsible for writing the letter." [4T114:2 thru 4T115:6; 4T13:8-11] Hunt testified that he had no idea who authored the PBA's letter when he

received it; that it was signed by Blewitt, O'Heney, and Cox; and that he assumed "it was a group effort that was coming from the heads of two unions." [4T13:8-20]

168. I credit the testimony of Blewitt, O'Heney, Lieutenant Cox, and Captain McGhee that Bascom and Chief Hunt were present at the September 1, 2016 meeting when McGhee made a joke, and O'Heney confirmed, that O'Heney was the author of the PBA's letter. Bascom and Hunt knew, or should have known, that O'Heney was the author of the PBA's letter.

169. Blewitt described Chief Hunt's demeanor at the September 1, 2016 meeting as "aggressive . . . [a]ccusatory . . . [and] very upset." [1T68:9-21] Blewitt testified that Hunt was "red in the face" and "pointing his finger"; that there was "shouting between [Hunt] and Cox"; and "[a]t one point Director Bascom had to step in and kind of regain control of the meeting, and kind of settle down the tone in the room . . . [a]nd, got back on topic to attempt to address the matters." [1T68:19 thru 1T69:5]

170. O'Heney described Chief Hunt's demeanor at the September 1, 2016 meeting as "very angry"; "visibly angry about the letter"; and "like he took [the PBA's letter] very personally, as if we were attacking him." [2T70:4-22] O'Heney testified that "there was some yelling between Hunt and Cox . . . [about] all the issues that were addressed in

the letter" and that Hunt did not agree with anything in the letter." [2T70:14-25]

171. Lieutenant Cox described Chief Hunt's demeanor at the September 1, 2016 meeting as "upset", particularly "upset that [the PBA's letter] got public . . . [and] they weren't happy about it." [1T193:25 thru 1T195:4] Cox testified that he believed "[Chief Hunt] and Director Bascom felt that this was a personal affront to both of them." [1T228:4-18]
172. Blewitt described then-Director Bascom's demeanor at the September 1, 2016 meeting as "upset" and that he "wasn't listening." [1T69:9 thru 1T70:4] Blewitt testified that Bascom "claimed that the . . . letter was in 'dirty pool' . . . and it was 'disingenuous'"; and that Bascom "felt that [the PBA] aired it as a political trick . . . [because] [it] came around the same time as collective negotiations." [1T69:12 thru 1T70:4] Blewitt also testified that he has known Bascom "since [he] was sixteen . . . [and] can tell when he's upset." [1T69:22 thru 1T70:4]
173. O'Heney described then-Director Bascom's demeanor at the September 1, 2016 meeting as "not as emotional . . . but . . . more condescending" because he was upset about the PBA's letter. [2T71:1 thru 2T72:3] O'Heney testified that Bascom "specifically called the letter 'dirty pool' and

'disingenuous.'" [2T71:7-11] O'Heney testified as follows when asked whether Bascom was upset about the letter:

Yes. I was given the impression -- you know, obviously I was the very junior person i[n] that room with very senior people in charge. So I was -- at least I felt like a how dare I kind of attitude towards myself, anyway. . . .How dare I have an opinion about these things, how dare I question anyone's authority, or who I am at such an early stage in my career to be having any opinion about matters that were contained in the letter.

[2T71:15 thru 2T72:3]

174. Lieutenant Cox described then-Director Bascom's demeanor at the September 1, 2016 meeting as "upset" but that "he really didn't speak[,] [e]specially when the Chief and [Cox] started [their] conversation, [Bascom] pretty much didn't say anything until the end, he said, okay, maybe we should calm down for a second." [1T195:4-10] Cox testified that Bascom "said that the letter was 'dirty pool'" and "[h]e felt we only [wrote the letter] because we were coming up on negotiations, or something to that effect." [1T195:11-21]
175. Captain McGhee testified that during the September 1, 2016, then-Director Bascom called the PBA's letter "dirty pool" and "disingenuous." [3T202:18 thru 3T203:8]
176. Bascom admitted that he described the PBA's letter/actions as "dirty pool" and "disingenuous" during the September 1, 2016 meeting. [3T48:8 thru 3T49:6] Bascom explained that he was "expressing [his] opinion . . . [and] 'dirty pool'

specifically related to releasing [the PBA's letter] to [a] community activist prior to talking to [NTPD leadership]."

[3T110:8-14] Bascom clarified his comments as follows:

Again we were early on in negotiations. We had just agreed to a process, and the letter was released to a community activist prior to having any discussions with us about the majority of the issues in this letter. And I, also, felt, again, to describe the disingenuous part, as you can see in my response to Mr. Williams, I'm pointing out the fact that the PBA [was] aware we were transitioning to a new radio system, PBA was aware that we hired additional officers, PBA was aware of the scheduling negotiations th[at] [was] ongoing, and it just seemed to me that releasing this letter to the public was more of a political move than a move to garner good relations with us to try to address these issues.

[3T48:16 thru 3T49:6; CP-7]

177. Chief Hunt testified that during part of the meeting, he had an argument with Lieutenant Cox regarding the fact that certain aspects of the PBA's letter asserted that FOP members were not performing their job properly yet failed to identify anyone specifically. Hunt testified that he believed Cox "wasn't happy with [him] at the time because Captain McGhee had just been promoted . . . on August 1st" and "Cox felt that he should have been put into . . . a position that was available as a lieutenant in the [Internal Affairs] department where Captain McGhee came from."

[4T20:24 thru 4T24:9; 4T126:14 thru 4T128:9] Hunt conceded

that it was reasonable to assume that during the argument with Cox, "the two of [us] were yelling at each other" but that he did not have any issue with the tone that Cox took or with how the interaction occurred; that they "agreed to disagree"; and that Cox was not disciplined or accused of disrespecting Hunt's authority/position as a result.

[4T22:21 thru 4T24:9]

178. Captain McGhee confirmed that "[Chief Hunt] and Lieutenant Cox had a very forceful conversation" about the PBA's letter. [3T175:19 thru 3T176:16]

179. During the September 1, 2016 meeting, the PBA's letter was discussed line-by-line. [2T69:18 thru 2T70:3; 3T27:11-25; 4T24:10-23]

180. Bascom testified that the parties went through the PBA's letter "line-by-line . . . [to] discuss each specific issue" that was raised. [3T27:11-25]

181. Chief Hunt testified that he thought the issues raised in the PBA's letter were discussed at the September 1, 2016 meeting. Hunt "explained [NTPD's] positions and how [they] would try to move forward to correct issues" regarding manpower and radios/radio communications. [4T29:17 thru 4T33:13]

182. O'Heney testified that "every point in the letter was argued and refuted or discredited in some way." [2T69:24 thru

2T70:3] Blewitt testified that Chief Hunt did not agree with the PBA's concerns. [1T69:6-8] Captain McGhee testified that "[i]n the long run, I think it was fruitful . . . [but] the initial . . . accusation and sitting and confronting your accuser, there was definitely some frustration on both sides of the table." [3T175:19 thru 3T176:1]

183. Bascom testified that the discussion regarding how the PBA's letter was released was not "confrontational" and that he was "[not] angry about that at that time"; that NTPD Command Staff "just expressed [its] disappointment in regards to how it was released" and that he was "disappointed with the way it was released." [3T28:4 thru 3T29:15]

184. Chief Hunt testified as follows regarding the PBA's request that NTPD remove officers from other assignments and reassign them to the Patrol Division:

Q. And now at that meeting did the PBA request that the Neptune Township Police Department remove officers from other assignments? I'll be more specific. Did they request that the Township remove officers from the Prosecutor's Office, from the DEA, from the SCART program, from the DRE program?

A. That was one of the contentions in the letter that was discussed, to remove these programs so they could have more people.

Q. And would removing them from those programs have provided more people for patrolled positions?

- A. Yes. But we were hiring -- we just hired four officers, and we were in the midst of hiring another four officers. And I felt that that wasn't beneficial because they weren't short-staffed to the point of they were in danger on the road. They had -- were working with the minimum manpower, had extra people and just so they could have more time off. I was going to disband units so they could have more time off? I wasn't doing that.
- Q. And are there certain benefits to having a liaison with the Monmouth County Prosecutor's Office?
- A. Surely.
- Q. Can you tell us what those benefits are?
- A. Officers assigned to the narcotics task force go up there, and they're responsible for handling narcotic investigations that stem from Neptune and branch out. They work in conjunction with my Street Crimes Unit that I run, so they work together and filter information up and down. The narcotics strike force works with us when we conduct narcotic search warrants and other search warrants in our town. And when we have targets in other towns that our people can't do, we use that pipeline through the guy assigned there, so he picks it up and does the co-investigations into other towns and then back into our town when the investigation is developed.
- Q. So that we're a little bit clearer on that, Asbury Park borders Neptune, correct?
- A. Yes.
- Q. I'll use Asbury Park as an example. If there is a narcotic ring operating out of Asbury Park, is it going to bleed over into Neptune?
- A. Yes.
- Q. And is it permissible for a Neptune Township police officer to go over into Asbury Park and perform a raid?
- A. No.

- Q. Is that the kind of situation that you're describing here, where those kinds of investigations would require, I guess, a joint task force through the prosecutor's office?
- A. Sure. Even if our Street Crimes' officers develop -- we develop informants, being this unit, so when they develop targets that are over the board into Asbury, that informant gets turned over to the officer assigned to the task force, and then they, in turn, work with us in doing that search warrant and stuff in another town.
- Q. So that provides a tangible benefit to the Township?
- A. That's correct.
- Q. The DEA assignments, what's the tangible benefit that the Township receives from those?
- A. It's the same. The DEA task force, they're assigned in Monmouth County, the officers assigned to them, and they work on large-scale targets. And they even take minimal targets, develop large scale targets. So, again, our Street Crimes Unit working in conjunction with the County and also working in conjunction with the DEA, develop targets and are able to do bigger targets that, in turn, solve crimes for us.
- Q. And does that permit the Township access to a portion of the forfeiture funds recovered during those investigations?
- A. Yes.
- Q. Now the MOCERT program itself, having officers assigned to MOCERT, is there any direct benefit to the Township?
- A. No, not really.
- * * *
- Q. When MOCERT comes into a Township, do they take complete control over the situation or are they supposed to establish a joint command with local officers?

- A. It's unified command. Once they arrive it's a unified command to determine how to move forward.
- Q. Which means that regardless of who's on the MOCERT task force, there is local input and information available to MOCERT whenever they're in the Township?
- A. Yes.
- Q. So if MOCERT were to come in and there's not a single Neptune Township member on MOCERT, they would still have access to Neptune Township police officers and resources?
- A. Correct.

[4T24:24 thru 4T29:16]

185. Bascom testified as follows regarding the discussion of MOCERT at the September 1, 2016 meeting:

- Q. During that meeting was the issue of MOCERT ever brought up as one of the outside assignments that could be curtailed?
- A. I believe we did discuss MOCERT, but that was not one the PBA was looking to remove. And, you know, certainly it was one that, you know, we would question as to the benefit of Neptune as compared to the others.
- Q. And why is that?
- A. MOCERT has been around for, about, 30 years. The previous three or four police chiefs in Neptune chose not to assign anybody to MOCERT. Chief Hunt decided to give it a shot and see how it would impact our department and benefit our department, if we assigned an officer, or a few officers, to MOCERT, originally it was to be one. And we looked back, even at this time, and MOCERT had rarely been used in Neptune, I believe, once at that point over the 30-year period.
- Q. Had you had any conversations with the Chief at that point regarding removing MOCERT from the available programs?

- A. I don't believe so. In August of that year, I believe, he was still in that, what he called, the trial period of MOCERT.
- Q. Did you have any opinion as of the September, I believe, it was September 1st was the meeting, as of that September meeting, did you have any opinion, personally, in your role as police director about the Township's participation in MOCERT?
- A. I had an opinion about MOCERT in regard to its value to Neptune, yes, I felt that out of all of these assignments, MOCERT brought back the least benefit back to the town.

[3T37:24 thru 3T39:7]

H. Then-Director Bascom's September 1, 2016 Email

186. Following the September 1, 2016 meeting, then-Director Bascom sent an email to Nicholas Williams (Williams), the Township's Mayor or the Township Committee's police liaison at the time; Bascom copied the Township's Business Administrator (Gadaleta), who was Bascom's supervisor at the time. [CP-7; 1T71:16 thru 1T78:4; 3T47:7-23] Bascom testified that Williams was upset by the PBA's August 15, 2016 letter and wanted to know what the Township was doing to address the issues that were raised. Bascom testified that he sent his September 1, 2016 email in response to Williams' request for feedback. [3T47:7-23]
187. Bascom's September 1, 2016 email provides in pertinent part:
- . . .The PBA President took full responsibility for preparing and distributing the letter and apologized for expressing his

concerns in such a manner. They also apologized for many of the inaccurate representations and the accusatory tone of the letter. That being said, we reviewed the letter in detail and dealt with all items described in the letter and several other matters that arose during the conversation.

1. The PBA stands by their request to increase staffing in the police department. Their main reasoning for increased staffing is to allow officers more flexibility in attaining time off. We pointed out that the Township is currently short staffed in the patrol division due to matters beyond our control. We have 3 officers out on extended suspensions, 2 officers who recently resigned to take other jobs, and 2 officers out on extended sick leave because their wives are pregnant (FMLA). To assure that we always have sufficient manpower on the streets, we move people around and provide overtime. We advised them that we would move rapidly to fill the two open slots and to resolve the cases of the 3 suspended officers.

2. They also claimed that we have an aversion to paying overtime. This w[as] completely inaccurate as I was able to show them that they have been paid out over \$100,000.00 in overtime so far this year and that they have accumulated more than \$400,000 in comp time.

3. They did raise an issue where a certain Lieutenant failed to assign anyone to a specific zone and left it uncovered and has done this on several occasions. Captain McGhee was directed to meet with the Lieutenants and advise them that they are to do whatever must be done (offer overtime, force overtime, hold over shifts, etc) to assure that we always meet our minimum manpower assignments.

4. Their discussion regarding superfluous, time-consuming administrative tasks was almost laughable. They questioned why they have to train, write reports, interview

suspects, etc.... seems to me that they forgot they were police officers. They also seemed to forget that in the old days, they had to come in to headquarters and type all of their reports on typewriters. They also forgot that we have hired part time jailors to book and process their prisoners so they no longer have to do it. And that we civilianized many jobs form[erly] handled by police officers so they could have more officers on the road patrolling.

5. Their accusations that sergeants were not fulfilling their duties by covering zones turned out to be a single incident that also turned out to be justified and appropriate. The Sergeant was in headquarters for training for two hours, during that timeframe they remained available to respond to calls. When there was a call in her zone, a patrol officer from another zone offered to take the call. This is appropriate and allowable. This was more of a personal grudge they seemed to have with a few sergeants. The lieutenants have been advised to assure that the sergeants are doing their jobs.

6. They claimed that the special assignments to street crimes, internal affairs, and loaned officers were not mission critical assignments. That is why they are not leaders in the department. All of these assignments are mission critical and absolutely necessary in a township like Neptune. The five officers in the street crimes unit make more arrests than the 35+ officers in the patrol division combined. They provide an additional police presence during the busiest times. After speaking with the PBA and FOP, they backed off the statement that these assignments were not important, but again, asked that we pull officers off of these assignments so patrol officers could take more time off.

7. As for the radio system, this was a poorly timed, off-base, inaccurate attack. We just purchased \$400,000.00 of brand new, high tech

radios for the entire police department. They are the latest and greatest. They were tested and selected by members of the PBA and FOP after months of demos. There are a few members of the PBA and FOP who are aligned with a different brand of radio and are feeding the rest with nonsense regarding the Tait radios that were purchased. It turned out that the majority of the issues with the radios were human user error. We will be sending out more remedial level instructions on the use of the radios in hopes of reducing human errors. They also attac[k]ed the county dispatch program. Again, the county dispatch program is far advanced as compared to what we could and had provided in house. We checked the stats for the county, all calls, (9-1-1 and routine) exceed the nationally accepted standard of 90 seconds from receipt of call to dispatch of the first unit. In fact, the average for 2016 to date is 71 seconds. The standard is for 9-1-1 (your most emergent) calls, but we applied that same standard to routine non-emergent calls as well and still come out at 71 seconds. Are there specific instances of human error or delay? Absolutely. They were told to report specific instances so they can be investigated and remediated.

8. As for the 10 hour schedule. This is nothing more than a negotiating ploy. Again, the PBA wants more time off. By going to a 10 hour Pitman schedule, they would work 2 days, have 2 days off, then work 3 days and have two more days off... the problem with 10 hour days is that we would need to purchase and maintain 4-6 more police cars as there would be an inordinate number of officers in the patrol division for 6 hours each day when the shifts overlapped. In addition, it puts a large number [of] officers on duty during our slowest work period (2 AM until 6 AM). Regardless, as they were told during negotiations, the PBA is to develop a 10 hour shift proposal and present it to the command staff to determine if it results in a benefit to the [T]ownship and the officers.

In the end, this letter was inappropriate and poorly timed. Both the PBA and the FOP started negotiations with the [T]ownship this month. All of these matters could have been discussed as part of negotiations. But they chose to attack the Chief. Regardless, we had a productive meeting. It lasted for roughly 3 hours. We agreed to meet with them regularly in labor/management meetings to avoid such accusations in the future. In most cases, the concerns were a result of a lack of communication or failure to report issues.

I reminded them that it was their responsibility to project a positive image of this police department and themselves in this community and that I feel that as a PBA and FOP they are lacking. They do not volunteer for anything that doesn't directly benefit them. They do not support public functions. They have involved themselves politically in an attempt to attain personal benefits.

Anyway, your public commentary can revolve around the poor judgment of the PBA to release the letter in the midst of negotiations. Such a tactic brings the intent of the letter in to question. Was it intended to garner support for the position in negotiations? Are they looking to influence you politically? Regardless, the Director and the Command Staff met with the PBA and FOP and reviewed their concerns, many of which were unfounded or not factual. Those concerns which were legitimate will be resolved. But the danger and safety questions that were included in the letter were exaggerated at a minimum. The leadership of the department will continue to meet with the PBA and FOP leadership to monitor labor-related matters.

[CP-7]

188. Bascom testified that he found the PBA's letter to be "accustory"; that some of the PBA's complaints were

"laughable" because they deal with administrative tasks that every police officer is required to do; and that the PBA's letter was inappropriate because the Township and PBA "were in the midst of contract negotiations" and had just specified the ground rules. [3T76:25 thru 3T85:1] Bascom conceded that he was generally familiar with the "scope of negotiations" and that many of the items in the PBA's letter "[were] not negotiable." [3T78:2 thru 3T79:5] Bascom also conceded that he was unable to identify the members of the PBA and FOP that he referenced in his email "who are aligned with a different brand of radio" because the PBA did not tell him specifically who was complaining, just that there were PBA members that supported Motorola and were always going to support Motorola. [3T69:5 thru 3T71:11; CP-7]

189. Bascom testified as following regarding use of the word "laughable" in his September 1, 2016 email:

- Q. Now you report to the Township -- yes, you report to the Township that the discussion regarding superfluous time-consuming administrative tasks was almost laughable, was that meant to be disrespectful to the PBA?
- A. No.
- Q. Can you explain your use of that language?
- A. Sure. I find that, you know, asking to be excused from training, writing reports, and core responsibilities of your day-to-day requirements to be somewhat laughable. That's like me saying that I shouldn't have to prepare the budget because it takes too much

time[.] [A]s the CFO, it's a core responsibility.

- Q. Now, in your meeting with the PBA, did you express that sentiment to them?
- A. Yes, I did.
- Q. Did you express it in these terms?
- A. Yes, I did.
- Q. Did they take that, from what you could tell, did it appear that they took that as an insult?
- A. No.
- Q. Was that part of the meeting affable?
- A. I think the entire meeting was debating topics and trying to get through the issues that were raised.

[3T43:3 thru 3T44:1; 3T80:13 thru 3T81:22;
CP-7]

190. Blewitt testified that then-Director Bascom's representation in the September 1, 2016 email - i.e., "[t]he PBA President took full responsibility for preparing and distributing the letter and apologized for expressing his concerns in such a manner" - was "[not] an accurate statement." Blewitt testified that although he did take full responsibility as PBA President, the PBA representatives "apologized for having the letter leaked, or any sort of role [they] may have had [in] it becoming public . . . [but] were adamant that [they] did not leak it [because] that was a major point of contention." Blewitt also clarified that the PBA's letter was "actually authored by . . . O'Heney" and that "the PBA . . . [did not] apologize for expressing its concerns at the September 1, 2016 meeting." [1T73:5 thru 1T74:12; CP-7]

191. I credit the testimony of Blewitt, O'Heney, Lieutenant Cox, and Captain McGhee that Bascom and Chief Hunt were concerned, unhappy, and upset about the PBA's August 15, 2016 letter. Not only was the letter leaked to the public before Bascom and Hunt could meet with the PBA, it also raised certain substantive issues that they found absurd. In addition, the letter was circulated shortly after the PBA and FOP had agreed on ground rules and had begun negotiations for new collective agreements and was issued despite the fact that there had been quarterly meetings since 2015 between Hunt and the unions regarding operational concerns including, but not limited to, scheduling and manpower. The PBA's letter also heightened the scrutiny on the Township and NTPD, as well as Bascom and Hunt, during a period when NTPD was already exposed to negative press related to Seidle's sentencing, a cell-block death, and multiple lawsuits. Bascom and Hunt's feelings about the letter were most clearly displayed during contemporaneous (and subsequent) meetings and in written correspondence.

I. Subsequent Meetings, Etc. in September/October 2016

192. The PBA's August 15, 2016 letter was discussed again at NTPD's September 15, 2016 Command Staff meeting. Blewitt testified that in addition to himself, Bascom, Hunt, McGhee, Gualario, O'Heney, and PBA State Delegate Thomas Claffey

(Claffey) attended the meeting. [CP-8; 1T78:12 thru 1T81:18]

193. Blewitt testified that Chief Hunt was standoffish and still upset and angry about the PBA's letter; that Hunt would not respect him or speak to him. Blewitt testified that then-Director Bascom was also defensive about the PBA's letter and upset by it. [1T78:12 thru 1T81:18] Blewitt testified that "[t]here was clearly still bad blood about the letter's content, and the fact that it became public." [1T81:14-18]
194. Captain McGhee testified that after his first full month (August/September 2016) on the job as captain of operations, he began to evaluate the production of patrol officers, including O'Heney. McGhee testified that "MOCERT had zero to do with" his evaluation of O'Heney; "it was lack of production as a patrol officer." [3T123:23 thru 3T129:24; 3T219:5 thru 3T221:9]
195. On October 12, 2016, Lieutenant Cox sent an email to Captain McGhee indicating that Cox had a discussion with O'Heney on October 4, 2016 regarding the fact that O'Heney's "production appears to have fallen recently" and O'Heney acknowledged that "he was aware and assured [Cox] [that] he

[would] improve throughout the rotation." McGhee forwarded the email to Chief Hunt. [R-70^{6/}]

196. Captain McGhee explained the basis for his email exchange with Lieutenant Cox as follows:

- Q. Now, you received this email from Lieutenant Cox, correct?
- A. Yes, sir.
- Q. And it was directed to you based on a conversation you had with Lieutenant Cox?
- A. Yes.
- Q. Can you tell us what the basis of that conversation you had with Lieutenant Cox was?
- A. In general, it was definitely a conversation I recall having with the various lieutenants of the shifts in reference to the performance, or lack of production numerous officers were having. And one of the officers on his shift happened to be Officer O'Heney, and it was just my, I guess, duty or obligation to make sure everyone was

6/ The PBA objected to the admission of R-70 and related testimony, asserting that it is not relevant. [3T124:22 thru 3T126:8; 3T141:7-16] R-70 is an email dated October 12, 2016 from Lieutenant Cox to Captain McGhee, and a forward of that email dated October 24, 2016 from McGhee to Chief Hunt. I overrule the PBA's objection. I find that R-70 and related testimony are relevant and probative with respect to McGhee's evaluation of patrol officers' production and Hunt's monitoring of MOCERT members' performance as NTPD officers, as well as the Township's basis for removing NTPD patrol officers O'Heney and Chippendale from MOCERT and for discontinuing NTPD's participation in MOCERT. See N.J.A.C. 1:1-15. The PBA had an opportunity to examine its own witnesses, to cross-examine the Township's witnesses, and to call rebuttal witnesses. [3T171:6 thru 3T174:6] The PBA did not present any case on rebuttal and has failed to raise any doubt regarding the reliability/accuracy of R-70 or related testimony.

doing the best they could possibly be doing. And I thought that if the captain of patrol who knew the position could address the supervisors who could address the officers, that, maybe, that officers would take a little ownership to their career and respond to, okay, the captain is noticing things. It was something I thought would benefit the department, being new to the position, and I thought that coming directly from the supervisor, officers would respond, hey, the captain is wondering why your numbers are down. You know, have a conversation with -- it wasn't just Officer O'Heney, it was everybody that I felt was not producing or just kind of laying back, that it was obvious that numbers were down for certain officers.

- Q. Did you have any theories as to why, particularly, Officer O'Heney would be experiencing a down-tick in his production?
- A. Not necessarily any theories, but when someone's numbers are down, I guess, the best way of getting them up would be having more time on the road, having more time in patrol to kind of, you know, master that craft before taking on other responsibilities.

[3T126:12 thru 3T127:23; R-70]

197. Captain McGhee testified that there was no particular reason he forwarded Lieutenant Cox's email to Chief Hunt; that he did not recall having a direct conversation with Hunt about the email; that Hunt did not direct him to put undue scrutiny on O'Heney or Chippendale; and that Hunt did not express to him a displeasure with O'Heney or Chippendale.

[3T127:24 thru 3T129:21; 3T219:9 thru 3T221:9]

198. Chief Hunt testified that he wrote "O'Heney: MOCERT file" on the top of the October 12, 2016 email that Captain McGhee forwarded to him. Hunt testified that he did not direct McGhee to make any inquiry regarding O'Heney's production; that McGhee was not aware that he was filing the information under MOCERT statistics; and that he did not recall having a personal conversation with McGhee indicating that the email/evaluation had to do with MOCERT. Hunt testified that "[a]nything regarding MOCERT that [he] would get, [he] would give to [his] secretary and tell her to keep with the MOCERT files . . . in case [Hunt] needed to go to that for a review." [3T250:19 thru 3T253:7; R-70]

199. Chief Hunt testified as follows regarding why he assumed the October 12, 2016 email that Captain McGhee forwarded to him related to MOCERT:

- Q. Now, this particular document, there is no message from Captain McGhee, why did you assume this had anything to do with MOCERT?
- A. Captain McGhee and I, he had taken over in August, and Captain McGhee was having problems with scheduling MOCERT operators, and he, basically, said one of my biggest problems every month is trying to provide training for this program, the two guys and the technical operators that he had to assign he had problems with manpower scheduling with them.
- Q. And so you made the assumption that it had to do with MOCERT?
- A. Yes.

Q. Did Captain McGhee ever tell you that this had to do with MOCERT?

A. I don't remember having a personal conversation, I talked to those guys daily.

[3T252:8 thru 3T253:7; R-70]

200. The PBA's August 15, 2016 letter was discussed again at NTPD's October 27, 2016 Command Staff meeting. Blewitt testified that in addition to himself, Bascom, Hunt, McGhee, Gualario, and O'Heney attended the meeting. [CP-9; 1T81:19 thru 1T85:17]
201. Blewitt testified that Chief Hunt was still upset about the letter and then-Director Bascom was more reserved. [1T81:19 thru 1T85:17] Blewitt testified that Hunt and Bascom were "not happy about [the letter] . . . [because] [i]t caused a lot of attention towards them from the [T]own[ship's] [C]ouncil and the public." [1T84:9-14]
202. O'Heney testified that there was continuing hostility about the PBA's letter from Chief Hunt and then-Director Bascom at the October 27, 2016 meeting. [2T78:4 thru 2T79:6]
203. Captain McGhee testified that during his time as captain of operations from August 2016 through March 2017, he was "[n]ever given any indication by Chief Hunt that [Hunt] was angered by the PBA['s] letter"; that Hunt never expressed to McGhee "that he was holding any kind of grudge against the PBA"; and that Hunt never expressed to McGhee "that he was

holding a[] grudge against Chippendale or O'Heney."

[3T174:9-22]

J. Methods of Instruction (MOI) Course

204. On July 19, 2016, Chief Hunt approved and then-Lieutenant McGhee issued a Training Memorandum to O'Heney and Chippendale notifying them that they would be attending a Methods of Instruction (MOI) course from November 16-23, 2016. [CP-19; 1T159:18 thru 1T161:23; 2T49:18 thru 2T50:11]

205. Chief Hunt testified as follows regarding the MOI course:

- Q. Do all of your officers undergo Methods of Instruction training?
- A. No.
- Q. Which officers undergo Methods of Instruction training?
- A. Everyone has to have that. Any field training officer through accreditation has to acquire field training officer. There's a group of people that are going to instruct -- have to instruct other officers. So a field training officer has to go through that school as a part of the accreditation process.
- Q. Now, the accreditation process, that had been ongoing with Neptune Township?
- A. We initially started it when I came in in 2014. We became accredited in 2016 and we just re-accredited this year.
- Q. Now, if you have a field training officer program that you're attempting to get accredited and you have obviously new recruits in 2014, 2015 that need to be trained, would that invalidate your accreditation process if the training officer had not gone to this course?
- A. No, it's just that we have [to] do that. And that's one of the biggest problems, is obtaining the time to send these officers -- you only usually get like two slots, once in the beginning of the

year, once at the end of the year, so you can only send two people in the beginning of the year and two in the end to go to schools, I believe six or seven days long, so it's a big commitment by the departments too. And I've been going through all of my officers to get them all field trained. It was just you have to do it in sequence, you can't do it all at once.

Q. So a field training officer who trains -- who does his field training officer duties and then later goes to the Methods of Instruction class would qualify for an accredited training?

A. Yes.

Q. A field training officer who trains and then never goes to the class would not qualify for accredited status?

A. Correct.

[4T56:24 thru 4T58:20; 4T88:23 thru 4T90:13]

206. O'Heney testified that he has served as a field training officer (FTO) since June 2013. [2T164:22 thru 2T165:7]

O'Heney was required to attend a two-day training course at the Monmouth County Police Academy before he became a FTO.

[2T165:8-15] O'Heney testified that when he became a FTO in 2013, there was no policy requiring him to attend the MOI course. [2T165:16 thru 2T166:23]

207. NTPD Standard Operating Procedure (SOP), Volume 5, Chapter 1, requires FTOs to attend the "Field Training Officer's Program" and the "Methods of Instruction" course; however it did not become effective until June 6, 2017. [CP-23] NTPD SOP Vol. 5, Ch. 1 superseded a previous version of the SOP that went into effect on March 29, 2017. [CP-23]

208. Chief Hunt testified that "there was . . . [a] policy requiring FTOs to attend [the] MOI course in November of 2016" and that policy "was put out in 2014", specifically "July of 2014." Hunt conceded that in response to the PBA's discovery demand for information regarding FTOs and the MOI course, the Township provided NTPD SOP Vol. 5, Ch. 1; he "guess[ed] . . . [that] they printed out the most recent training SOP instead of going back to the first one in 2014." Hunt confirmed that neither the March 29, 2017 version nor the June 6, 2017 version of NTPD SOP Vol. 5, Ch. 1 was in effect at the time O'Heney and Chippendale attended the MOI course in November 2016. [4T90:15 thru 4T92:1; 4T146:23 thru 4T148:4; CP-23]
209. Chief Hunt acknowledged that the MOI course was/is expensive. [4T85:24 thru 4T86:13] Hunt also testified that the MOI course "[was] [n]ot just for instructors for FTOs, it's for . . . [a]nyone in the future that you want to have someone train[] something, you can use it for that." [4T85:1-8] Hunt clarified that "[p]rior to O'Heney being sent to the MOI course there were . . . other FTOs sent to that course"; "[p]robably 20 people." [4T88:6-22]
210. I credit Chief Hunt's testimony that there was a policy (formal or otherwise) in effect as of July 2014 requiring NTPD FTOs to attend the MOI course. While I acknowledge

that the Township did not produce a written policy dating back to July 2014, Hunt's testimony was credible and consistent with NTPD's efforts to gain accreditation that began in 2014 and came to fruition in 2016; the limited space available for NTPD FTOs to attend the MOI course; and the fact that approximately 20 NTPD FTOs had attended the MOI course before O'Heney and Chippendale attended the course in November 2016.

211. O'Heney testified that he was attending the MOI course so that he could provide instruction to NTPD officers regarding officer-down rescue techniques he learned in MOCERT.

O'Heney testified that prior to receiving the July 19, 2016 Training Memorandum, he approached then-Lieutenant McGhee and asked if he could teach a class to NTPD officers regarding officer-down rescue techniques. McGhee liked the idea and said he would present it to Chief Hunt. McGhee subsequently informed O'Heney that "they were both onboard, they liked the idea, but that [O'Heney] would have to go to the MOI course in order to be qualified to teach anything to anyone in [NTPD]." [2T50:12 thru 2T52:10]

212. Chippendale testified that "[it] was [his] understanding" from "speaking with [O'Heney]" that O'Heney was attending the the MOI course so that "[O'Heney's] experience and training from MOCERT [could] . . . be brought back to us,

and he was going to teach the stuff that he had learned to us in turn." [1T165:1 thru 1T166:1]

213. O'Heney attended the MOI course in November 2016.

[2T80:2-4] However, O'Heney never instructed NTPD officers regarding officer-down rescue techniques. [2T79:16 thru 2T82:1]

214. O'Heney testified that when he returned from the MOI course, he approached Captain McGhee to discuss providing instruction. O'Heney testified that McGhee told him that this was no longer going to happen and "indicated that it was because . . . Chief [Hunt] was upset about the letter and . . . was well aware that [O'Heney] wrote it." [2T79:16 thru 2T82:1]

215. Chief Hunt testified that O'Heney was sent to the MOI course because he was a FTO and "was next in line to go." Hunt testified that "Captain McGhee [n]ever approach[ed] [him] . . . [to] ask if O'Heney could teach a class on advanced tactics he learned in MOCERT"; that there was "[no] basis to the allegation that . . . [Hunt] sent [O'Heney] to the MOI class specifically to teach tactics to officers and then refused to allow [O'Heney] to do so based upon [the PBA's August 15, 2016] letter." Hunt testified that since O'Heney completed the MOI course, he has continued to operate as a

FTO and to train NTPD officers. [4T58:21 thru 4T61:5;
4T87:18 thru 4T88:5]

216. Blewitt testified that "when [he] first started getting involved in the PBA, [he] had numerous other collateral duties" including EMT, volunteer firefighter, HazMat liaison, CPR instructor, and Fit Test operator. However, Blewitt testified that "all those collateral duties were taken away from [him]" - e.g., he was the only one out of four Street Crimes Unit officers "that was not allowed . . . to train with the detectives"; he was removed from the Street Crimes Unit "[w]ithin [one] year" of becoming PBA Vice President; and his "training [opportunities] were stripped." Blewitt also testified that "over [the] years, [he] and O'Heney, sometimes Claffey, were not afforded the same opportunities as other officers for overtime . . . events" which "were hand-selected by the Chief" and that this "caused issues and . . . concerns of retaliation in the form of collateral duties." [1T130:14 thru 1T134:1]

217. I credit Chief Hunt's testimony that O'Heney was not sent to the MOI course solely so that he could instruct NTPD officers regarding officer-down rescue techniques that he learned in MOCERT; that O'Heney was in fact next in line to go to the MOI course; that sending NTPD officers to the MOI course was consistent with, and part of, NTPD's efforts to

gain accreditation that began in 2014 and came to fruition in 2016; that there was limited space available for NTPD FTOs to attend the MOI course; that approximately 20 NTPD FTOs had attended the MOI course before O'Heney and Chippendale attended the course in November 2016; and that O'Heney continued to operate as a FTO and to train NTPD officers after he completed the MOI course. While I also acknowledge Blewitt's testimony regarding his experience of losing NTPD collateral assignments as he advanced within PBA leadership as relevant background information, I find it less probative than other available evidence that would have been more probative (e.g., McGhee's testimony regarding his conversations with O'Heney about the MOI course and/or being removed from MOCERT; Blewitt's rebuttal testimony regarding his conversations with Bascom in January and March/April 2017). Captain McGhee was an available witness and testified on direct examination that Hunt never indicated that he was angered by the PBA's letter and never expressed that he was holding a grudge against the PBA and/or O'Heney and Chippendale. [3T174:9-22] However, and despite the fact that the PBA had the initial burden of establishing a prima facie retaliation case, the PBA failed to cross-examine McGhee regarding his direct testimony or regarding O'Heney's hearsay statement that he had conversations with

McGhee before/after he completed the MOI course and that McGhee indicated that O'Heney was not permitted to teach officer-down rescue techniques after he completed the MOI course because Hunt was upset about the PBA's letter and knew that O'Heney wrote the letter. [2T50:12 thru 2T52:10; 2T79:16 thru 2T82:1] McGhee could have corroborated, or rebutted, O'Heney's hearsay statement and thereby substantiated or discredited Hunt's testimony. Even if O'Heney's hearsay statement is admissible under the residuum rule,^{7/} I place greater weight on Hunt's testimony regarding his first-hand conversations with McGhee; and greater weight

^{7/} N.J.A.C. 1:1-15.5, entitled "Hearsay evidence; residuum rule," provides:

(a) Subject to the judge's discretion to exclude evidence under N.J.A.C. 1:1-15.1(c) or a valid claim of privilege, hearsay evidence shall be admissible in the trial of contested cases. Hearsay evidence which is admitted shall be accorded whatever weight the judge deems appropriate taking into account the nature, character and scope of the evidence, the circumstances of its creation and production, and, generally, its reliability.

(b) Notwithstanding the admissibility of hearsay evidence, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness.

on Hunt's testimony regarding his reasons for sending O'Heney to the MOI course.

218. Chippendale testified that the MOI course was a prerequisite required by the Police Training Commission for anyone who was going to be an instructor. [1T160:15-23]

219. Chippendale testified that he was attending the MOI course because he had expressed an interest in becoming a firearms instructor. [1T160:24 thru 1T161:6] As part of his effort to become a firearms instructor, Chippendale had attended the Glock Armor School in January 2015. [1T161:12-19; 1T162:22 thru 1T163:12]

220. Chippendale attended the MOI class in November 2016. [1T161:7-11] However, Chippendale never became a firearms instructor. [1T163:14-16] Chippendale never served as a FTO. [2T176:19-22]

221. Chief Hunt testified as follows regarding why Chippendale was sent to the MOI course:

Q. So Chippendale went to the MOI course. Now Chippendale was -- why did he go to the MOI course, what was he training?

A. At the time?

Q. Yeah, what was he going to train?

A. Chippendale is a unique guy in that he fixes things, he does different things. And at the time they felt that we might have Ryan Chippendale move forward and have to do something some day that would have to instruct someone how to do it, so he would be a good candidate to go at that time.

Q. And it wasn't for him to be a firearms instructor?

A. No.

* * *

Q. It's an expensive course. So Chippendale, who went to the Methods of Instruction course in November 16th through 23rd, 2016, the Township paid for him to go to an expensive course with no real plan for him to instruct anything?

A. Nothing says to this day that he can't be included as an instructor somewhere -

Q. But he hasn't been an instructor since he went to --

* * *

A. He could go to still be a firearms instructor. He still could be a computer instructor on something in the computer systems. He could be a lot of things. So just because he has that now, he never has to go for this class again because he has that.

Q. Okay. So he could be something in the future, but he isn't to date, correct?

A. As of today, no.

[4T85:9 thru 4T87:8]

222. Chief Hunt testified that Chippendale's "role with the PBA [and/or] his opinions on the radios . . . [did not] have any impact on his ability to become a firearms instructor."

Hunt testified that although he makes the final decision regarding who becomes a firearms instructor, "[his] command staff comes to [him] and gives [him] who they believe should be the next person put in there, and [Hunt] usually agree[s] with that." Hunt also testified that Maher "was [not] given [a firearms instructor position] as a consolation prize for when the MOCERT program was cancelled"; that "Lieutenant

Cox" recommended Maher and "[in] discussion[s] [with] [his] captains", Hunt "agreed that we felt Maher was a better fit than Chippendale at that time." [4T33:14 thru 4T35:19]

223. Lieutenant Cox confirmed that he recommended Maher to be a firearms instructor and that "[t]he leadership of [NTPD] . . . generally follow[s] [his] recommendations." Cox testified that he was approached by Maher before he was appointed as a firearms instructor; that Maher was/is "qualified" and "suited" to be a firearms instructor; and that "someone with more seniority would be given preference over someone with less seniority" for appointment to the position. Cox also testified that Chippendale "would make a good firearms instructor and be able to instruct", but may or may not "[f]it well" with the group because "[Chippendale] wasn't of the same opinions that we were on the range." [1T200:1 thru 1T204:20]

224. Maher, who was hired on July 11, 2011, had more seniority with NTPD than Chippendale, who was hired on July 23, 2013. [CP-11]

K. Discontinuation of NTPD's Participation in MOCERT

225. Following the September and October Command Staff meetings, "[O'Heney's] participation in MOCERT was curtailed." [2T79:7-15] Specifically, O'Heney was denied time off on December 7, 2016 to attend MOCERT training. [1T10:23-25]

O'Heney was also denied the opportunity to attend MOCERT training on December 21, 2016. [2T82:12 thru 2T83:7; 3T130:1 thru 3T131:7; CP-21; R-75]

226. Captain McGhee confirmed that November 2, 2016 was the last MOCERT training that O'Heney was permitted to attend.

[3T205:8 thru 3T206:23] McGhee testified that O'Heney was not permitted to attend MOCERT training in December 2016, January 2017, February 2017, or March 2017; and that "O'Heney's participation in MOCERT effectively ended with [the] last training [on] November 2nd, as far as training goes." [3T206:2-23]

227. Blewitt testified that "[a]t some point following the October 2016 meeting . . . [he] became aware that there were issues with O'Heney's participation in MOCERT" and that O'Heney "was now being advised that he could not attend . . . [MOCERT] training." [1T85:18 thru 1T86:14] Blewitt testified that in January 2017, he "[was] concern[ed] about whether or not O'Heney would be able to continue participating in MOCERT" because "[s]hortly after the letter and the meetings, it was apparent that [O'Heney] was beginning to get withdrawn . . . [and] [the PBA] felt that it was because of the letter and retaliation." [1T86:15 thru 1T87:16]

228. Captain McGhee testified that he regularly adjusted schedules to accommodate MOCERT training "up through Tuesday, October 4, 2016 . . . at least" and that "it [was] easy to adjust . . . schedules to deal with . . . MOCERT training . . . [w]hen manpower permitted." McGhee testified that "[w]hen manpower didn't [permit] and [he] had to try to make deals with officers to try to finagle a schedule, it became more burdensome." [3T119:11-22] Captain McGhee testified as follows regarding how/when he stopped trying to make accommodations for MOCERT training:

- Q. Do you recall a time where you stopped trying to make those accommodations?
- A. I remember, you know, speaking with the Chief and explaining that the manpower issues were just exhausting and that we need to really consider, you know, other options rather than keep sending people out the door to keep people in-house, because our manpower was just terrible at the time. So that conversation, you know, evolved into what other else -- what other options are you going to have to make sure you are maintaining the proper staff.
- Q. Do you recall when you approached the -- first, let me ask you this, did you approach the Chief about that or did the Chief approach you?
- A. No, I approached him. Through questioning of me, what are your concerns, he was, like, kind of feeling out what my concerns were in my new role, and Line Items 1, 2, 3 were manpower, manpower, manpower, and I always bring that to him, because it wasn't an easy transition, we had a lot going on at that time, including that.

- Q. Do you recall when you first approached the Chief about that? Was it at the very beginning? Was it after several months? If you can give me even an approximate time that you came to the Chief with that concern?
- A. It would have easily had to have been within the first couple of months. I really have to refer to some notes, but I know not knowing my latitude to time, I was seeking, you know, guidance in, can I change officers' schedules to allow any officer to go to any training, but I, specifically, remember going to a younger officer every other week at one point and changing his schedule to allow manpower to be sufficient to allow, you know, training to exist.
- Q. Do you recall who that officer was?
- A. The officer who was affected?
- Q. Yes.
- A. It was Officer Polera.
- Q. Was there any consequence to you approaching that officer so frequently?
- A. No, but I think I kind of leveraged his lack of time on against him a little bit, he was a new officer I kind of went to him, hey, do you mind changing and, you know, anyone would say anything early on, so he was very accommodating, but kind of strong-armed in so many ways. I knew he wouldn't say no.

[3T119:23 thru 3T121:19]

229. Captain McGhee explained that "[t]heoretically", he "would . . . expect [NTPD] officers hired around the same time to have [a] similar [number of] outside non-mandatory training [hours]." However, McGhee conceded that the number of non-mandatory training hours in a given year for a NTPD officer was "very dependent on the willingness of [NTPD] to send someone . . . [because] [m]ost of the[m] . . . are costly";

and that although "12 full days of training where the officer is being paid on duty and not available for patrol . . . is . . . a lot for a given year", it would not necessarily be a lot "[f]or a handful of officers . . . because some of the training that people get qualified or designated as a[n] . . . expert in . . . might require two weeks, which there is your 80 hours right there" such that "different training does mandate some more time." [3T155:13 thru 3T157:3]

230. Captain McGhee testified that he reviewed a NTPD training spreadsheet "specifically with respect to [NTPD] officers involved in MOCERT." [R-126^{8/}; 3T154:6 thru 3T157:6]

8/ The PBA objected to the admission of R-126, asserting that it is not properly authenticated and is hearsay. [3T160:24 thru 3T163:3; 3T235:25 thru 3T236:2; 3T141:7-16] R-126 is an undated NTPD Roster with Dates of Hire and Training Hours. I overrule the PBA's objection. R-126 was produced during the course of discovery and is therefore presumed authentic. See N.J.A.C. 1:1-15.6 ("[a]ny writing offered into evidence which has been disclosed to each other party at least 10 days prior to the hearing shall be presumed authentic"). Moreover, even if the PBA raised a genuine question of authenticity, I find that Captain McGhee's testimony provides sufficient indicia of reliability/accuracy (i.e., R-126 was initially created in order for NTPD to monitor and track training hours as a result of the previously-referenced lawsuits filed by Savage and Gonzalez; McGhee served as NTPD's training coordinator before being promoted to captain of operations in August 2016; McGhee identified his successor, Sergeant O'Donnell, as the person who currently compiles/organizes NTPD's training records [3T147:15 thru 3T150:20; 3T154:6 thru 3T163:3]). Regarding the hearsay objection, R-126 is subject to the residuum rule and I find that McGhee provided
(continued...)

McGhee confirmed that "[NTPD] officers in MOCERT have substantial[ly] more amount of training hours than officers not involved in MOCERT." [3T154:6 thru 3T160:23; R-126]

231. I credit Captain McGhee's testimony that accommodating training requests was taxing/exhausting, frequently resulted in inequities that fell upon junior NTPD officers, and created manpower difficulties in the Patrol Division. I also credit McGhee's testimony that when comparing NTPD officers with similar dates of hire, MOCERT members have substantially more training hours than non-MOCERT members. I also credit McGhee's testimony insofar as it again indicates that as the new captain of operations starting in August 2016, he was learning about a new position as well as the ongoing policies/practices/procedures that had been implemented in the Patrol Division by his predecessor,

8/ (...continued)
sufficient legally competent evidence to support a finding of fact regarding NTPD officers' number of training hours. See N.J.A.C. 1:1-15.5. Moreover, McGhee testified that R-126 is a document that is "regularly maintained by [NTPD]" and "all training hours that an officer receives . . . are logged into this training sheet." [3T154:6 thru 3T155:2] Accordingly, I find that R-126 is subject to a hearsay exception. See N.J.R.E. 803(c)(6) ("[r]ecords of regularly conducted activity . . . made in the regular course of business and . . . a regular practice of that business to make it"). The PBA had an opportunity to examine its own witnesses, cross-examine the Township's witnesses, and to call rebuttal witnesses, including Sergeant O'Donnell. [3T171:6 thru 3T174:6] The PBA did not present any case on rebuttal and has failed to raise any doubt regarding the reliability/accuracy of R-126.

Captain Mangold; and that McGhee was also re-assessing those policies/practices/procedures and raising issues or concerns regarding NTPD and the Patrol Division with Chief Hunt (e.g., continuing to accommodate training requests, including for MOCERT members, would exacerbate manpower issues/inequities within NTPD's Patrol Division).

232. Captain McGhee testified as follows regarding the state of NTPD's participation in MOCERT as of December 2016:

Q. Now, was there any, to your knowledge, was there anything that had occurred in December 2016 to call into question the [T]ownship's participation in the MOCERT program?

A. Beside the ongoing manpower issues, we did have an unauthorized MOCERT event occur in our town earlier that month.

Q. Do you recall the date of that event?

A. I believe it was December 5, 2016.

[3T131:8-16; 3T132:8 thru 3T144:5; R-81^{9/}]

^{9/} The PBA objected to the admission of R-81 and related testimony, asserting that it is not relevant. [3T133:1 thru 3T134:1; 3T141:7-16] R-81 is a Departmental Investigation Report dated January 10, 2017 re: Case No. 16NT30341 (the December 5, 2016 MOCERT call-out) that was written by Captain McGhee. I overrule the PBA's objection. I find that R-81 and related testimony are relevant and probative with respect to the state of NTPD's participation in MOCERT in December 2016 as well as the Township's basis for removing NTPD patrol officers O'Heney and Chippendale from MOCERT and for discontinuing the NTPD's participation in MOCERT. See N.J.A.C. 1:1-15. The PBA had an opportunity to examine its own witnesses, cross-examine the Township's witnesses, and to call rebuttal witnesses. [3T171:6 thru 3T174:6] The PBA did not present any case on rebuttal and failed to raise any doubt regarding the relevance or reliability/accuracy of R-81 or related testimony.

233. Captain McGhee testified that he completed a "departmental investigation" and "report in relation to a barricaded subject incident [that] occurred on December 5, 2016" at 10 Ridge Avenue, Neptune, New Jersey. McGhee testified that he conducted the investigation because "the event that night was problematic in a lot of ways" and Chief Hunt said "you need to conduct an investigation on how everything broke out during that event." [3T132:8 thru 3T134:10; R-81] McGhee testified that no one was formally disciplined as a result of this investigation and no Internal Affairs investigation was ever launched; however, "[the] information [was] transmitted to [Hunt] to help inform him as to where the breakdown in communication was." [3T134:10 thru 3T135:10; R-81] McGhee testified that at the conclusion of his investigation, he reported his findings to Hunt. [3T141:18 thru 3T144:5; R-81]
234. Captain McGhee testified that MOCERT was not properly activated on December 5, 2016 - i.e., "any time MOCERT is supposed to be activated, it runs through the chain of command of the officers who are on duty and the only one that can actually authorize the deployment of MOCERT for Neptune would be the chief of police." [3T135:11 thru 3T136:12] McGhee testified that "[a]ny officer that is attached to any outside additional law enforcement agency,

such as MOCERT, their direction is to contact the shift commander who will provide authorization . . . through the chain of command up to the chief." [3T137:12-19]

235. Captain McGhee testified that Sergeant Faulhaber, Chippendale, and O'Heney were not authorized to respond to the December 5, 2016 MOCERT call-out. Specifically, Faulhaber was off-duty at the time and did not receive proper authorization to respond from the chain of command; Chippendale received authorization to respond from Faulhaber; and O'Heney was on-duty patrolling and did not receive proper authorization to vacate his zone and respond from the chain of command. McGhee also testified that there was "an[] issue with [O'Heney] having his gear with him . . . in the patrol vehicle . . . that he was assigned." Specifically, "[o]fficers . . . assigned to MOCERT were assigned a locker at headquarters where they [could] store their equipment, [including] . . . a rifle that they had assigned to them", and O'Heney's weapon "was, essentially, kept in a gun case loose in the back of an SUV, not in a vault, not somewhere secure . . . [s]o if any officer was away from their vehicle, it definitely exposes anyone the opportunity or presents itself to access a high-powered rifle." [3T136:13 thru 3T141:6; R-81] Captain McGhee testified that "the danger . . . if an officer does not seek

authorization to activate for MOCERT" is, for example with respect to O'Heney, "once he transitioned into MOCERT operations, the ability to have him deployed elsewhere to send him to another critical incident somewhere else in town was . . . lost . . . [,] [s]o we lost an officer without . . . the proper understanding that he was no longer employed for us." [3T139:22 thru 3T140:5; R-81]

236. Captain McGhee testified as follows regarding his recommendations/conclusions related to the December 5, 2016 MOCERT call-out:

Q. Based upon your investigation, based upon the numerous failures in, I guess, the chain of command in receiving proper authorization, did you report to Chief Hunt your findings?

A. Yes.

Q. And did you make any recommendations or conclusions based upon your investigation of the incident?

A. I think the report spoke for itself, and I let the Chief draw any conclusions.

Q. Did you ever meet with the Chief specifically to discuss it?

A. Yes.

Q. And do you recall the contents of that discussion?

A. Yes. Essentially, the Chief appreciated my efforts in looking into the investigation. There was conversation that -- long-standing conversation that MOCERT really wasn't working for us, and that it was kind of winding down, as it were, this being about five weeks after the incident itself. You know, his recommendation to me was have the officers who errored come sit down with you, and you can counsel them on what went wrong and, essentially, was a

retraining process that concluded the investigation and the finding.

[3T141:18 thru 3T142:18; CP-31; 3T56:25 thru 3T60:12; R-81]

237. On December 16, 2016, Chief Hunt sent an email to Captain McGhee, copying Captain Gualario and Captain Fisher, specifying that "all officers assigned to MOCERT will keep departmental assigned weapons and gear at police headquarters" and that "[n]o assigned MOCERT Officers will carry these weapons with them while they are working and assigned to the Patrol Division or Detective Bureau." [CP-20]

238. O'Heney testified that while he was a MOCERT member, he carried a NTPD-issued rifle (either an AR-15 or M-4) with him in order to make it easier to respond to MOCERT call-outs. [2T83:8 thru 2T85:14; 2T16:12-25] O'Heney testified that in December 2016, "[he] [was] no longer permitted to carry . . . either the AR-15 or the M-4 with [him]" when he was "out on patrol . . ." and this "would add a step" to his participation in MOCERT and "affected his response to incidents in town." [2T83:8 thru 2T85:14; 2T38:10 thru 2T39:14; CP-20] O'Heney testified that "at [this] point" he had concerns about his "continued participation in MOCERT." [2T85:15-18]

239. On December 22, 2016, Chief Hunt approved and issued a Special Memorandum to supervisors and police officers regarding the "Protocol for MOCERT, Air Support or RDF" that provides in pertinent part:

Effective immediately, supervisors shall not request the assistance of MOCERT or RDF without prior approval from the Chief of Police or designee. Neptune Township Police Officers assigned to these units shall not be activated without prior approval from the Chief of Police or designee.

[R-78]

240. Chief Hunt testified that he issued the December 22, 2016 Special Memorandum because "[t]here was an incident earlier in December that -- that [he] wasn't notified about an activation of MOCERT in [his] town, and [Hunt] wanted to be real clear about anyone to be activated has to go through [his] chain of command." [3T271:25 thru 3T273:4]

241. Captain McGhee testified as follows regarding whether there was a policy or procedure in effect regarding MOCERT before the December 22, 2016 Special Memorandum was issued:

- Q. As a captain employed by the Neptune Township Police Department, you were aware of policies and procedures?
- A. I'm aware policies and procedures exist, yes.
- Q. Are you familiar with most of them?
- A. Generally, yes. If I have to cite something specific, I can through using PowerDMS and being able to pull up the document.
- Q. Okay. Now, prior to December 22nd of 2016, there was no policy or procedure

with regard to how MOCERT would be activated in the Township of Neptune, was there?

A. I don't know that there was a, per se, policy, but I'm sure that there was some sort of directive or direction that existed.

Q. And -- but as captain, you were not aware of that particular directive or direction?

A. My understanding was that if MOCERT -- there was a MOCERT call-out, any officer that was requested was to call the shift commander, on-duty shift commander, and the shift commander would use the chain of command through the Chief to get authorization to respond.

Q. But there was no written policy with regard to that, that you are aware of?

A. There could have been something -- directive driven, maybe not a policy, but directive or some communication that definitely existed because I understand that's how the process worked and so did everyone involved.

Q. But you never saw that policy or directive?

A. I can't recall right now.

Q. Sir, if you look at R-78, which is --

* * *

Q. Is this the first time you saw a written memorandum or directive about MOCERT?

* * *

A. It could have been.

Q. Okay. It's dated December 22, 2016?

A. It is.

Q. And that was after the incident at 10 Ridge Avenue, correct?

A. Correct.

Q. Are you aware if anyone was informed that as a result of this incident their participation in MOCERT would be curtailed?

A. As a result of this incident?

Q. As a result of the Ridge Avenue incident, are you aware of any -- did you have any conversation?

A. No.

Q. You didn't have a conversation with Officer O'Heney about his participation in MOCERT would be suspended or cut off because of the Ridge Avenue incident?

A. Not specifically because of that, no.

[3T194:23 thru 3T197:10; 3T56:25 thru 3T60:12; 3T234:3 thru 3T235:13; 3T257:5 thru 3T258:9; CP-13; CP-31; R-12; R-29]

242. Bascom testified that he "believe[d] a policy was in effect" regarding MOCERT call-outs. However, he did not "remember [a] specific policy" and did not know if there was a written policy, but "just knew that the practice was to notify the Chief." [3T92:12-25; 2T38:10 thru 2T39:14; 3T257:5 thru 3T258:9; R-29]

243. Chief Hunt testified as follows regarding the state of NTPD's participation in MOCERT as of December 2016:

Q. Was this letter the topic of heated conversation or debate going into November or December of 2016?

A. No.

Q. Was this letter on the forefront of your mind when you were making a determination as to whether or not to continue with the MOCERT program at the end of 2016?

A. No.

Q. Now, at some point in 2016 you began investigating the idea of terminating the MOCERT program for Neptune Township, right?

A. Right.

Q. Had you been monitoring the progress of the officers involved in MOCERT?

A. Yes.

Q. Had you been monitoring the amount of time commitment that MOCERT required?

A. Yes.

- Q. Is that a process that had been ongoing since Robert O'Heney began his involvement?
- A. Yes. It's on the whole MOCERT program itself.
- Q. Was there any final precipitating event that led you to believe that MOCERT simply was not going to work for the Neptune Township Police Department?
- A. It was the issue in December, early December, where the call-out came in where I wasn't notified, and there was a complete failure by a lot of our officers to do the job correctly.
- Q. Now, was that the only reason why you cancelled MOCERT?
- A. No. I had been -- in speaking with Captain McGhee, who is my new patrol captain, and he was telling me about the issues he was having in scheduling it and moving people and just the overall commitment to us to them and what do we get out of it.
- Q. And you had been involved in conversations with the leadership of MOCERT?
- A. Yes, I had.
- * * *
- Q. And had you discussed displeasure with them about their changes in policy on activation of MOCERT members?
- A. We just discussed the program. My problems of them doing a full MOCERT blowout instead of just partial officer being assigned, yeah, we discussed everything.
- * * *
- Q. Now, during your conversations with the leadership of MOCERT did you advise them that you were thinking of suspending the program entirely?
- A. Yes.
- Q. Do you recall what their response to that was?
- A. The main conversation was with Captain [DuBrosky] with the prosecutor's office, and he said -- he basically asked me a unit like Neptune, he understands the

amount [of] training that it entails, and if we can scroll it back to one trained operator, one trained technician. And he asked me to take a look at that, and I told him I was thinking about deleting the unit altogether. And then I thought about it and I understand what it takes for them to do backgrounds and physicals, and I know that comes up in May, and then by the time an officer gets up and run[ning] [it's] October, I decided to leave two people in it.

- Q. And how did you determine which two officers to leave active with MOCERT during the deactivation process?
- A. Detective Taylor, who was in the Detective Bureau and didn't affect the patrol manpower issues; and Sergeant Faulhaber, who is not involved in patrol and he works administrative part of the town.

[4T44:1 thru 4T51:15]

244. Bascom recalled having a conversation with Chief Hunt in late December 2016 regarding discontinuation of NTPD's participation in MOCERT:

- Q. Now, at some point the Chief determined he was going to discontinue the MOCERT program, correct?
- A. That is correct.
- Q. Do you recall having any kind of conversation with him about the discontinuation of that program?
- A. Yes, I do.
- Q. Do you recall when that occurred?
- A. It was probably around Christmas, toward the end of December.
- Q. Do you remember specifically why the Chief indicated he wanted to discontinue the program?
- A. Yes. There had been a MOCERT call-out in Neptune that was not done according to policy or according to proper

procedure, and he began to question overall the value of MOCERT to Neptune Township. We also found that during that period that MOCERT had changed their call-out process, where before they had rotated officers, so your officer wasn't called on every single call. They changed it to a process where they are called all the time. And, in general, we were looking back and seeing that with the increased number of officers that had been assigned there and the value back to Neptune, that we had to question whether that was an important benefit to Neptune Township as a whole.

[3T53:13 thru 3T54:13; 3T56:25 thru 3T60:12;
3T255:19 thru 3T258:9; CP-31; R-39]

245. I credit the testimony of Chief Hunt, Bascom, and Captain McGhee inasmuch as it indicates that the December 5, 2016 MOCERT call-out was illuminating for NTPD Command Staff regarding NTPD's lack of formal MOCERT policies and/or NTPD officers' failure to observe informal MOCERT controls during the test/trial period (e.g., failure to understand and/or obtain proper authorization from NTPD to respond to a MOCERT call-out; failure to appropriately store/secure NTPD-issued rifles that were used for MOCERT) as well as the relative value of NTPD's participation in MOCERT. I find their testimony about the December 5, 2016 MOCERT call-out and the conclusions that were drawn reliable based in part upon the fact that NTPD's response appears to be an implicit acknowledgment that MOCERT was not working (or was working

improperly) for NTPD - i.e., NTPD officers were not disciplined as a result; rather, NTPD immediately began to issue formal policies and guidance regarding MOCERT-related activities and ultimately evaluated NTPD's continued participation in MOCERT. I find this response, as well as the subsequent removal of patrol officers from MOCERT and the discontinuation of NTPD's participation in MOCERT, congruous with the record as whole regarding the initiation of NTPD's participation in MOCERT on a trial/test-basis; ongoing assessment of MOCERT members' performance as NTPD officers and how MOCERT was working with/for NTPD; and Hunt's admission that it ultimately became clear that permitting NTPD officers to participate in MOCERT was a poor decision. I also credit McGhee's testimony insofar as it again indicates that as the new captain of operations starting in August 2016, he was learning about a new position as well as the ongoing policies/practices/procedures that had been implemented by his predecessor, Captain Mangold; and that McGhee was also re-assessing those policies/practices/procedures and raising issues or concerns with Chief Hunt (e.g., NTPD's lack of formal MOCERT policies and NTPD officers' failure to observe informal MOCERT controls; the value/benefit of MOCERT and/or whether it was working for NTPD).

246. On January 2, 2017, O'Heney sent an inter-office memorandum to Chief Hunt requesting permission to attend a three-day Rifle/Pistol/CQB course offered by AZTEC Training Services from March 9-11, 2017 on O'Heney's "own time and at [his] own expense". Hunt denied the request. [CP-22] O'Heney testified that the three-day Rifle/Pistol/CQB course was "MOCERT-related." [2T86:6 thru 2T88:2]

247. O'Heney testified that by/in January 2017, he "[was] worried that [he] may not be on MOCERT anymore" and "was pretty sure it was done at that point." [2T88:3-18]

248. On January 11, 2017, Blewitt and then-Director Bascom exchanged text messages as follows:

-Blewitt - Sorry for the delay I'll come in tomorrow for the contract . . . attorney gave me the blessing. Who else needs to sign besides me just Claffey?
-Bascom - That's it. Thanks
-Blewitt - Ok

[CP-10]

249. Blewitt testified that the next day, January 12, 2017, he went to then-Director Bascom's office to sign the CNA between the Township and the PBA. Blewitt testified that only he and Bascom were present. [1T87:10 thru 1T89:16] Blewitt testified as follows concerning the January 12, 2017 meeting:

Q. What did you and Director Bascom discuss at the meeting?

A. Besides the contract itself, getting it signed, the biggest topic was I explained to him that Officer O'Henev was not being afforded the opportunity to attend training, despite manpower allowing it; and, explained to him my concern about the training.

Q. And, what was the Director's response?

A. He told me that it was because of the letter. He said that the Chief was pissed. He said that, give it time, and he'll speak to him. And, he told me to keep him in the loop for next training so that it could be resolved.

Q. So, the Director indicated to you that the Chief was angry about the letter?

A. Yes.

Q. And as a result, O'Henev was not permitted to participate in MOCERT?

A. That's correct.

[1T88:22 thru 1T89:16]

250. Blewitt confirmed that after the January 12, 2017 meeting, he "ke[pt] Director Bascom in the loop" regarding MOCERT training. [1T89:17-23] On February 7, 2017, Blewitt and then-Director Bascom exchanged text messages again as follows:

-Blewitt - Next mocert training day is 2-15
-Bascom - OK. I'll talk to him soon
-Blewitt - Thank you

[CP-10]

251. Blewitt clarified that he believed the "him" in then-Director Bascom's text message referred to "the Chief, because that's what was discussed earlier." [1T89:24 thru 1T90:12; CP-10]

252. O'Heney testified that he had a conversation with Blewitt "about [Blewitt's] conversations with . . . Director [Bascom]" in January 2017. O'Heney testified that Blewitt's meeting "was [not] specifically about the MOCERT issue, but contract issue[s] . . . [a]nd . . . Director [Bascom] indicated to [Blewitt] that [O'Heney] had been suspended from MOCERT, or taken off of MOCERT, at that time because . . . Chief [Hunt] was upset about the [PBA's] letter, and - but it wasn't a done deal at that point, so that he was going to talk to him and try to work it out, something to that effect." [2T88:19 thru 2T89:17]

253. On direct examination, Bascom testified as follows regarding the January 12, 2017 meeting with Blewitt:

- Q. January 11, 2017. I guess January 11, 2017, you had a text message conversation with Officer Blewitt, do you recall that?
- A. Not particularly, but...
- Q. Do you recall him coming to your office to sign contracts for the PBA on January 12, 2017?
- A. I don't recall the specific date, but I do recall him coming to my office.
- Q. Did you and he have any conversation about the status of the MOCERT program at that point?
- A. Yes, we did.
- Q. Do you recall the specifics or details of that conversation?
- A. He asked if the MOCERT members were going to be sent to training. I don't recall specifically when the training was, but if they are going to be sent to training.

- Q. And do you recall whether or not you had a response for him?
- A. I told him I would speak to the Chief.
- Q. Did you tell him that MOCERT was definitely off?
- A. No, I did not.
- Q. And is that because no decision had been made yet?
- A. That is correct.
- Q. Did you promise Officer Blewitt that you would try to get the Chief to send officers to MOCERT training?
- A. I told Officer Blewitt I would speak to the Chief.
- Q. Did you at any point advise Officer Blewitt that the Chief was going to suspend the MOCERT program based on [the PBA's] August 15, 2016 letter?
- A. No.
- Q. Are you certain about that?
- A. Yes, I'm certain.
- Q. Are you aware of what the consequences would be if you advised him of that?
- A. In general.
- Q. Can you tell us what you believe those consequences would be?
- A. It would probably be retaliation or something along those lines.
- Q. How long have you been dealing with labor management issues?
- A. For over 30 years, I've been with the Township for 33.
- Q. Can you think of any plausible scenario in which you would advise a PBA member of the deliberate retaliation of the Chief against him for a protected union activity?
- A. Absolutely not.
- Q. What would you think of someone in your position who did do that?
- A. I would think that they made a mistake.

[3T54:19 thru 3T56:24]

254. On cross-examination, Bascom clarified his testimony regarding the January 12, 2017 meeting with Blewitt:

- Q. And on January 12, 2017 you met with PBA President Blewitt, correct?
- A. Was that in connection with signing the CNA?
- Q. Yes.
- A. Then, yes, I did.
- Q. And there was discussion in that meeting about the MOCERT program, correct?
- A. The meeting was just minutes long. He came in, signed the bargaining agreement, and advised me that -- or asked me if the members of MOCERT were going to be attending the training.
- Q. Okay. And what was your response?
- A. That I would reach out to the Chief. I'm not involved in that. I don't make decisions on who goes to training and who doesn't.
- Q. Okay. But the issue of why Officer O'Heney, at least, did come up during that January 12, 2017 meeting, correct?
- A. No, they just told me specifically that O'Heney was due for training, I believe, O'Heney and others. I don't know if it was specifically just Officer O'Heney, but he said that training was coming up, and he wanted to know if they were going to be sent to training, and I told him I would ask the Chief.
- Q. . . .There was no discussion about whether Officer O'Heney was being retaliated against during that meeting, is that your testimony?
- A. There was no discussion.
- Q. No difficulties at all.
- A. None at all.
- Q. None. The word retaliation never came up?
- A. No.
- * * *
- Q. Did you help prepare [the Township's Answer], Mr. Bascom?
- A. I believe I did.
- Q. You did. If you look at paragraph 22 [of the Township's Answer], which is on page 4, PBA President asked the Director about the suspension of MOCERT following

Vice President O'Heney's removal from the team?

A. Is there a question, I'm sorry.

Q. Did you see that paragraph?

A. I see it.

Q. And did you help prepare the response to that answer?

A. I believe I did.

Q. And in your response to that answer you said that PBA [President] Blewitt expressed to the Director that he believed the reduction of officers assigned to MOCERT was in retaliation for the letter released by the PBA, FOP

--

A. Correct.

Q. But you just testified that there was no discussion at all of retaliation at that meeting?

A. On January 12th, that's correct.

Q. Okay. So there was no discussion, but you did have discussions with Officer Blewitt about retaliation?

A. Subsequent to that conversation in January, I believe, the Chief made the decision to pull out of MOCERT later in the year, maybe March, April, somewhere around that time, and that's when I had conversation with Blewitt.

Q. March or April of 2017 or '16?

A. I believe '17.

Q. '17, okay. Well O'Heney's last day of training was in November of 2016 from MOCERT, are you aware of that?

A. No, but I believe.

Q. So there was no discussion about retaliation at the January -- in your words, there is no discussion at all about retaliation in the January 12, 2017 meeting?

A. Correct.

Q. But there was subsequent discussions about retaliation?

A. That is correct, around the time that the Chief actually disbanded our involvement in MOCERT or made the move to step away from MOCERT.

Q. What were those discussions?

- A. The discussion was in general, you know, Blewitt felt it was in retaliation, and I was explaining that it was not in retaliation, it was based on, basically, the issues I described here, the number of hours of training, the lack of benefit to the Township, the fact that it was really just a trial period. We originally had intended, the conversation with the Chief and I, was to send one police officer to the MOCERT program and try that out. Subsequent to that, the Chief made a decision to expand that, he, eventually, to five police officers, and it was a detriment to the department.
- Q. Okay, so at some point you did have a discussion with Blewitt where allegations of retaliation were made; is that correct?
- A. That's correct.

[3T86:17 thru 3T90:23; J-2, ¶¶22-23]

255. Bascom testified that in response to Blewitt's allegation that Chief Hunt's decision was retaliatory, Bascom believed he began an investigation or addressed the issue through his conversation with Blewitt in March or April 2017. However, Bascom also testified that other than his conversation with Blewitt in March or April 2017,^{10/} he "[didn't] recall" taking any other steps to document Blewitt's retaliation allegation although he did have a conversation with the Township's Business Administrator (Gadaleta) about it.

[3T90:24 thru 3T92:5; J-2, ¶¶22-23]

^{10/} Notably, the PBA's charge was filed on April 25, 2017. [J-1]

256. The testimony of Blewitt and Bascom regarding the January 12, 2017 meeting is consistent with respect to Blewitt inquiring about the status of MOCERT, including whether MOCERT members would be permitted to go to upcoming training; Bascom offering to speak with Chief Hunt about the status of MOCERT, including whether MOCERT members would be permitted to go to upcoming training; and Bascom requesting that Blewitt provide an update regarding the next MOCERT training so that Bascom could approach Hunt before that date. However, the testimony of Blewitt and Bascom regarding the January 12, 2017 meeting diverges with respect to whether Bascom indicated the following: that NTPD's participation in MOCERT had been permanently discontinued; that Hunt had suspended O'Heney and/or NTPD's participation in MOCERT due to the PBA's letter; and that Hunt was deliberately retaliating against O'Heney or the PBA. Their testimony also diverges inasmuch as Bascom testified that he had another conversation with Blewitt in March or April 2017 (after Hunt decided to discontinue NTPD's participation in MOCERT in March 2017) regarding the PBA's retaliation claim and at that time Bascom explained the reasons for Hunt's decision. I find Bascom's testimony reliable based in part upon the manner in which he testified about the conversations he had with Blewitt in January and March/April

2017 - he had no issue recalling the conversations or their details; he spoke clearly, confidently, and without hesitation; and he demonstrated no outward sign of prevarication. I also find Bascom's testimony reliable based in part upon the fact that it is consistent with the record as a whole, including the Township's Answer and Hunt's testimony, regarding the basis for removing NTPD patrol officers O'Heney and Chippendale from MOCERT and discontinuing NTPD's participation in MOCERT. I also find Bascom's testimony reliable based in part upon the fact that although he is not an attorney, Bascom is a sophisticated professional with over 30 years of experience dealing with labor-management issues and he was/is aware that advising anyone (particularly the PBA President) that Hunt was engaged in retaliatory action against the PBA or one of its members would constitute direct evidence of a violation of the law. I find it implausible that Bascom would make such a statement. I also find the PBA's theory of the case (i.e., O'Heney and Chippendale were removed from MOCERT and NTPD's participation in MOCERT was discontinued based upon anti-union animus) incongruous with Bascom's testimony that he engaged in a subsequent conversation with Blewitt in March/April 2017 and offered an explanation for Hunt's decision. Again, I find it implausible that Bascom would

exert the time/effort to meet with the PBA President and provide policy reasons for discontinuing NTPD's participation in MOCERT if in fact the Township's decision was motivated by anti-union animus and designed to retaliate against the PBA or any of its members. Moreover, and despite the fact that the PBA had the initial burden of establishing a prima facie retaliation case, the PBA failed to recall Blewitt in order to reiterate or clarify his testimony about the January 12, 2017 meeting and to offer any testimony about the March/April 2017 conversation. Blewitt could have corroborated, or rebutted, Bascom's testimony and thereby bolstered or undermined his own credibility. However, the PBA did not present any case on rebuttal. Accordingly, I credit Bascom's testimony.

257. On January 24, 2017, Captain McGhee sent an email to Chief Hunt that provides:

Here are the MOCERT team assignments:
-P.O. Maher and Det. N. Taylor - White Team
-P.O. O'Heney - Red Team
-Sgt. Faulhaber and P.O. Chippendale are not assigned a color. All calls.

[R-84; R-85]

258. On January 24-25, 2017, Chief Hunt exchanged emails with Barry DuBrosky (DuBrosky) regarding MOCERT team assignments. In the exchange, Hunt forwarded Captain McGhee's January 24, 2017 email to DuBrosky and stated: "This is what I was

told." [R-84; R-85] In response to Hunt's forward, DuBrosky sent an email to Hunt that provides in pertinent part:

That is correct, I misspoke thinking there was a third team of operators when in fact the third team is the Sniper team. Sorry. Yes, the Geek Squad is called for all call-outs because there is only four of them, but that does not relieve any Neptune Township Police Officer of their responsibility of seeking your authorization and approval before responding. After thinking about it, it probably makes the most sense if Neptune had one operator assigned to the team and or one person assigned to the geek squad. I know the commitment of having three officers assigned to MOCERT is a lot . . . of time and required training for yours or any agency. Again completely your decision. If you would like I will have you added to the e-dispatch so you would be called/notified of all MOCERT call-outs immediately and can begin your approval process sooner than later.

[R-84; R-85]

In response to DuBrosky's email, Hunt sent an email to DuBrosky stating: "I will review this and determine if we even stay with it . . . I'm leaning to opt out so they better consider replacing all of them." [R-85]

259. Chief Hunt testified as follows regarding the email exchange with DuBrosky:

Q. Now, this January 24, 2017 email, it seems to indicate that Barry DuBrosky is expressing the idea to you that the commitment of having three officers assigned to MOCERT is a lot, had you made a decision, yet, whether or not to

- suspend MOCERT participation at that point?
- A. At this point we were in January of 2017 and MOCERT, in my opinion, wasn't working for the town, wasn't working for my department, and I was clearly thinking about just stopping everything. I had stopped -- since December, I hadn't allowed anyone to go to MOCERT since the incident on Ridge Avenue, and I was in discussion with Captain DuBrosky of pulling my whole unit of all operations of MOCERT, it was a new year, I was going to start clean.
- Q. But you didn't do that yet, right?
- A. Well, no, because pulling three operators and two technicians from the MOCERT squad before they had the chance to re-up, I don't feel would be fair to them either, and I had expressed that with, you know, conversations with Barry DuBrosky, and that's why he even suggested, at least, leave me one and one until we can get re-upped, and that doesn't happen until some time in May, the application process, and then, really, they can't get back in order until October of that year.
- Q. And that was a request that Barry DuBrosky made of you, correct?
- A. Yes.
- Q. That wasn't your idea from the start, was it?
- A. My idea from the start was I was going to stop the whole thing right then and there.
- Q. Before you did that, you engaged in these conversations?
- A. Yes, you know, we worked together as a team with other agencies, and I felt instead of walking away from the whole thing was give them the opportunity to see if he could get other people.

[3T274:2 thru 3T275:15; 3T275:15 thru 3T276:13; CP-31; 3T56:25 thru 3T60:12]

260. The PBA's August 15, 2016 letter was discussed again at NTPD's February 17, 2017 Command Staff meeting. Blewitt testified that in addition to himself, Bascom, Hunt, McGhee, Gualario, O'Heney and Cox attended the meeting. [1T90:13 thru 1T92:21; 2T95:4-24]
261. Blewitt testified that "radio communication issues" were discussed again and "[Chief Hunt and then-Director Bascom] weren't happy about that . . . [because] [t]hey had a lot of pride in their radio system" and questioned the "authenticity of [the PBA's] concerns." Blewitt testified that "[s]omebody brought up the point that they believed Chippendale was only upset because he had a friend who worked for Motorola and did not get the bid" and that Bascom and/or Hunt "knew that Chippendale was against the radios that were in the department." [1T90:13 thru 1T92:21; 2T95:4-24]
262. Bascom conceded that "the radio issue was discussed in multiple meetings . . . [g]oing all the way through, at least, February 2017." [3T109:5-10]
263. Chief Hunt testified that Chippendale "[was] not afraid to tell you what he thinks" and "[w]henever [Chippendale] found an issue or a dead zone or anything that was wrong with [the radio system], [he] was first on line to report that" or any problem with anything "since he got hired." Hunt

"assume[d]" that "the issues that Chippendale was raising with regard to the radios were reflected in the PBA's August 15, 2016 letter." Hunt testified that "Chippendale [was] one of [the] individuals that brought . . . forward" any "problem with the radios." [4T110:17 thru 4T113:6]

264. On February 8, 2017, Sergeant Faulhaber forwarded an email regarding the Township's participation in MOCERT (which he had originally received from Richard Conte (Conte) on February 7, 2017) to Captain McGhee, who in turn forwarded the email to Chief Hunt on February 9, 2017. Conte's February 7, 2017 email provides in pertinent part:

It appears that the two Neptune Officers may become inactive. On Sunday a request was made in regards to them responding to a MOCERT call in Neptune City. They were denied this response. This is going to create an issue where a necessary resource may not be at our disposal due to only two remaining officers be[ing] available. With that being said we need to start considering other Officers.

[R-88]

265. Captain McGhee testified that he was involved in certain conversations about NTPD's participation in MOCERT and that as of February 7-8, 2017, Chief Hunt had "[n]ot necessarily . . . made a decision as to whether or not . . . to suspend Neptune's participation in MOCERT." [3T144:6 thru 3T147:13]

266. On February 24, 2017, Chief Hunt approved and Captain Gualario issued a Special Memorandum to supervisors and

police officers regarding the "Protocol for SCART, MOCERT, RDF and DRE Call Outs" that provides in pertinent part:

ON DUTY: . . .
-Officers assigned to MOCERT or RDF will only be activated when manpower permits and with the approval of the Chief of Police or designee.

* * *

OFF DUTY: . . .
-Officers assigned to MOCERT or RDF will only be activated with the approval of the Chief of Police or Designee. If activated, County Dispatch will be notified so a case number can be generated and the shift commander will be notified who will make an entry on the Shift Commander report to document the call out.

[R-96]

267. Chief Hunt testified that the February 24, 2017 Special Memorandum was "intended . . . to make it real clear to everyone in [NTPD] on how call-outs [were] to be made for all agencies" and "was . . . a result of the confusion surrounding the December 2016 incident with MOCERT" despite the fact that it "wasn't specifically geared towards MOCERT." [3T276:15 thru 3T278:2]

268. On March 15, 2017, Chief Hunt sent an email to Donald Kronenwetter (Kronenwetter) asking Kronenwetter to call him regarding MOCERT. [R-100] Hunt testified that the telephone call was "in reference to [Hunt] disbanding MOCERT and everything, all of the equipment that was assigned to [his] officers, [and] how [Kronenwetter] really wanted to --

what he wanted back from [NTPD] officers that [Hunt] was pulling out of the unit." Hunt also testified that at this point in time he had not yet issued a memorandum to NTPD officers disbanding their participation in MOCERT, but that he did so "a day or two later, some time in March."

[3T278:4 thru 3T279:6; R-100; CP-12]

269. On March 21, 2017, Chief Hunt sent an inter-office memorandum to Maher, O'Heney, and Chippendale informing them that they would "no longer be assigned to the MOCERT Team." [CP-12; 1T92:22 thru 1T97:23; 2T89:19 thru 2T91:10]

270. O'Heney testified that the memorandum was "placed in [his] mailbox at work" and that despite the fact that he had been on MOCERT since 2014, "[n]obody officially told [O'Heney] anything" regarding why he was being removed. O'Heney testified that "[he] had been told by Captain McGhee that it was because of the [PBA's] letter." [2T89:19 thru 2T91:10]

271. Chief Hunt testified that "around December 2016[,] O'Heney's participation in MOCERT was [effectively] ended." Hunt testified that "[a]fter [the] incident . . . in early December [he] stopped everyone from doing anything until [he] received a department of investigation [report] . . . [regarding] the Ridge Avenue call" but "certain officers were allowed to continue with MOCERT . . . in 2017." [4T117:2 thru 4T118:13] Hunt testified that he "made the

decision to remove Chippendale, Maher, and O'Heney from MOCERT . . . [but] left Taylor and Faulhaber on [MOCERT]." Hunt testified that although "O'Heney was the longest-serving member [of MOCERT]" there was/is "nothing that says . . . when [Hunt] can . . . [or] cannot take someone off that team" and that he "[didn't] feel [he] [had] to explain [him]self to any of them" particularly because "everyone knew that [Hunt] wasn't happy with [MOCERT] . . . [and] that [he] was stepping back out of it." Hunt testified that "[this] information came back through the MOCERT leaders, everyone in MOCERT knew we weren't assigning anyone to MOCERT after January." [1T118:14 thru 1T120:12; R-88]

272. Chief Hunt clarified why he did not have a personal conversation with any NTPD officer regarding his/her removal from MOCERT:

. . .I don't feel that I have to go to my members and tell them personally that I'm pulling them off the [MOCERT] team. I can make that decision by giving them that written notification that they're no longer on the team.

[4T120:13-18]

273. Chief Hunt admitted that he "could have at any point taken everyone off the [MOCERT] team" but he "kn[ew] for [the] MOCERT team to get new people onboard to replace [NTPD's] five guys, it would probably take them [until] October 2017 to do that . . . [s]o that's why [he] left those two

officers on until they could re-supplement what they had to do." Hunt explained that he "didn't want to [create] [a] MOCERT problem . . . [because] [he] would have been taking five operators from the MOCERT team, and [he] knew for a fact that they had to re-up and have an application process, try-outs, have psychs, physicals." [4T120:19 thru 4T122:1]

274. Chief Hunt testified that he "chose to leave Faulhaber and Taylor" on MOCERT because they were not on patrol and because he knew how keeping detective Taylor on MOCERT would affect the Detective Bureau; he knew how keeping Sergeant Faulhaber on MOCERT would affect the Internal Affairs Division; and "[he] knew how [MOCERT] was affecting the entire [NTPD]." [4T122:2 thru 4T130:25] Hunt clarified his reasoning as follows:

- Q. So did you ever -- did you conduct a study as -- between November and March -- November of '16 and March of '17 concerning, you know, whether you could keep O'Heney, Maher and Taylor on the team, did you do any sort of research?
- A. Conduct a study?
- Q. Yeah, to see how it was affecting the Patrol Division?
- A. I knew how it was affecting everyone.
- Q. In the Patrol Division?
- A. I knew how it was affecting the entire department. That's my -- I no longer felt MOCERT did anything for the town and for us. My decision was to pull them back, we were actively engaged in active shooter partnership, all my officers were getting trained. I was supplying all the vehicles with tactical guns. I did a lot of things -- we've

moved forward from '14/'15, and I changed the way we did business. Also, with the way active shooter works anymore it's the quick response, it's to enter right away, let's do it. And that's not what MOCERT does. It's an hour before they even come to the scene, their response time. So the whole concept of dynamic immediate response is what police officers do now, be there, you take out the threat immediately. And I felt by having all my guys trained and doing it that way, MOCERT was something that I didn't need. And I was able to train my officers much more by not having to train MOCERT officers.

[4T122:17 thru 4T124:1; R-126]

275. On direct examination, Chief Hunt testified as follows regarding his reasons for discontinuing NTPD's participation in MOCERT:

- Q. Now, one of the reasons that the Township or the department offered for why the MOCERT program was cancelled was, in fact, manpower issues. Can you explain how that jibes with what you've got on the road now?
- A. That wasn't one of the -- there was a lot of reasons, but the reason -- I'm trying to explain this... MOCERT affected the way I trained people. At the time and even up there, when I have to send officers out on the road, I'll send officers to MOCERT training, that stopped me from allowing any other officers to go to any other training, and it cut down on my ability to train the entire department by just constantly having these officers go to that.
- Q. Now, are there other programs similar to MOCERT that the Township now takes part in?
- A. Again, that plays into the active shooter partnership. That started in

late 2015, and we really got full bore in that in 2016. And 2017 it was signing numerous officers on a monthly basis to go to this active shooter partnership. And that's a group of, I believe, 12 local towns, and now we all train together as a unit to address an immediate active shooter response. And all my officers now are active shooter trained and they go once, sometimes twice, to this active shooter training.

* * *

Q. Is there any other program that Neptune Township participates in that you can think of that require 16 hours a month, two full days, every month, and a full week in addition to those 16 hours every month?

A. No.

Q. Is there any program that you can think of that comes close to that level of time commitment for any officer?

A. No.

* * *

Q. Are there training opportunities outside of MOCERT that you want your officers to engage in?

A. Yes.

Q. Is it possible to engage in those other trainings if you're dedicating 16 hours a month to MOCERT?

A. No.

Q. Would you allow an officer to do more than 20-plus hours a month every month of training?

A. No.

Q. Is that fair to any other officers under your command if one officer is receiving that much training every month?

A. No, not on an annual basis. No.

[4T38:7 thru 4T43:12; R-126]

276. On cross-examination, Chief Hunt also testified regarding his reasons for discontinuing NTPD's participation in MOCERT:

- Q. Okay. And one of the reasons you said he was being removed was because of scheduling and manpower, correct?
- A. No. I said everyone was being removed because the system . . . no longer work[ed] for Neptune Township.
- Q. The system didn't work for Neptune Township, the system that for the past three years you had been allowing officers to participate in?
- A. Correct.
- Q. So it was all of a sudden no longer working for Neptune Township after three years?
- A. This was a test period. This program I put together, and probably one of my biggest mistakes was allowing them to go in the first place. No other chief ever allowed anyone to go to MOCERT. I allowed that to happen. And in looking at this three-year period, it was the [worst] decision I ever made, allowing that to happen. I should have never done it. And I would have had the same response time for MOCERT right now, but I did make that test period. I did do that. And I found after all it wasn't working for us, it didn't fit into us and I stopped it. I have an active shooter partnership that we're involved in. The training that we do now is spread out fair and equitably throughout the department. So, no, I got rid of that because I no longer wanted it.

[4T129:20 thru 4T130:25]

277. Sergeant Faulhaber and detective Taylor were permitted to continue as MOCERT members until the end of 2017/beginning of 2018 after patrol officers O'Heney, Chippendale, and Maher were removed in March 2017. Faulhaber and Taylor did not sign, and were not involved with, the PBA's August 15, 2016 letter. [1T93:1 thru 1T95:20; 2T92:24 thru 2T94:20]

278. Sergeant Faulhaber was permitted to continue MOCERT training in 2017. [2T163:17 thru 2T164:21; 3T206:24 thru 3T207:13; CP-30] Faulhaber remained a member of MOCERT until February 8, 2018. [1T11:17-19]
279. Taylor was permitted to continue MOCERT training in 2017. [2T162:7 thru 2T163:16; 3T150:1 thru 3T154:4; 3T206:20 thru 3T207:9; 3T279:8 thru 3T284:11; CP-29; R-103; R-133]
280. On September 7, 2017, Taylor sent a PowerDMS message to Captain McGhee requesting permission to attend "the annual week-long MOCERT training . . . scheduled for October 16-20 . . . at Fort Dix." On September 19, 2017, McGhee forwarded Taylor's September 7, 2017 message to Chief Hunt and asked for Hunt's thoughts. On September 20, 2017, Hunt replied to McGhee's September 19, 2017 forward and asked "[d]oes it interfere with Detective Bureau functions." [R-114; 3T279:8 thru 3T284:11]
281. Chief Hunt testified that he asked about interference with Detective Bureau functions "[b]ecause police work . . . is more important than what MOCERT wants to do in training, and the detective is handling major cases, and [Hunt] didn't know what he was involved in." Hunt testified that he did not remember whether Taylor attended the October 16-20, 2017 training or not. Hunt also testified that "at that point in

2017, [he] [was] prepared to end all Neptune Township participation in MOCERT training." [3T281:14 thru 3T282:22]

282. On October 30, 2017, Captain McGhee sent an email to Chief Hunt inquiring as to whether Taylor was permitted to go to "MOCERT this Wednesday 11/1/17." On October 30, 2017, Hunt replied to McGhee's October 30, 2017 email and asked: "Did he expire." [R-116; 3T279:8 thru 3T284:11]

283. Chief Hunt testified as follows regarding the October 30, 2017 email exchange:

Q. And when requested to attend that training, what was your response?

A. I asked did he expire.

Q. What does that mean?

A. I didn't believe he went to, at least, 80% of training that year. I know - I know he had attended a lot of training classes for MOCERT, so my question was could he even go because my feeling is he expired.

Q. That was your first response, rather than trying to find a way to send him?

A. Yes.

Q. Why is that?

A. Well, first of all, if he expired, there would be no sense sending him.

Q. Did you wish to continue the Township's participation in MOCERT at that point?

A. By the end of 2017, MOCERT had went through the application process, had brought new players on to the MOCERT team from other agencies, and I was going to, by the end of the year, I was closing the MOCERT program out.

[3T283:9 thru 3T284:4]

284. Taylor remained a member of MOCERT until February 2, 2018.

[1T11:8-10]

285. I credit Chief Hunt's testimony that his decision to remove patrol officers O'Heney, Chippendale, and Maher from MOCERT and to discontinue NTPD's participation in MOCERT was not motivated by anti-union animus, or designed to retaliate against the PBA or any of its members, in relation to the PBA's August 15, 2016 letter. Hunt admitted that although he was the first chief of police to permit NTPD officers to participate in MOCERT in 2014 on a trial/test-basis, by 2016/2017 it had become clear to him - based in part upon issues and concerns that were raised by Captain McGhee - that it was one of the worst decisions that he had made. While not an exhaustive list, Hunt based his conclusion on the following factors:

- while his original understanding was that there would never be a time when all of NTPD's MOCERT operators were sent to a call-out, Hunt learned in February 2016 that MOCERT had changed its policy and would be utilizing all of NTPD's MOCERT operators for call-outs which in turn would result in additional difficulties with NTPD's scheduling particularly within the Patrol Division as well as increased costs to the Township;

- while he was aware of MOCERT's training requirements in 2014, Hunt found that ensuring NTPD's MOCERT operators each attended 16 hours of training per month as well as one week of training per year (40 hours) created difficulties within the Patrol Division (e.g., although MOCERT members were only permitted to go to training when their shift was above minimum manpower,

accommodating MOCERT training requests exacerbated manpower issues/inequities);

-while he was aware of MOCERT's training requirements in 2014, Hunt also found that ensuring NTPD's MOCERT operators each attended 16 hours of training per month as well as one week of training per year (40 hours) created an inequitable distribution of training opportunities among NTPD officers such that MOCERT members had substantially more training hours than non-MOCERT members;

-while he knew or should have known starting in 2015 that NTPD's MOCERT members were being given permission to participate in MOCERT training and try-outs on their own time, Hunt eventually became aware that this was occurring and discontinued the practice because he recognized that it created liability issues for the Township (e.g., viability of workers' compensation claims if NTPD's MOCERT members were injured while engaged in MOCERT training on their own time);

-while he initiated NTPD's participation in MOCERT on a trial/test-basis in 2014, Hunt found (based in part upon the December 5, 2016 MOCERT call-out) that the lack of formal MOCERT policies and/or NTPD's officers failure to observe informal MOCERT controls was an issue that had to be addressed immediately by issuing formal policies and guidance regarding MOCERT-related activities and ultimately by evaluating NTPD's continued participation in MOCERT;

-while he was aware that reassigning NPTD officers from MCPO, DEA and/or the Street Crimes Unit to the Patrol Division would alleviate the Patrol Division's manpower issues, Hunt found that the benefit of maintaining these assignments outweighed any detriment to the Patrol Division; in contrast, while he was aware that discontinuing NTPD officers' participation in MOCERT would provide limited, albeit

immediate, relief for the Patrol Division's manpower issues, Hunt found that the benefit (if any) to the Township/NTPD of maintaining NTPD's participation in MOCERT was not outweighed by the detriment to the Patrol Division's manpower issues; and

-since 2014/2015, NTPD had begun participating in SMCASP/ASRT, a program that was similar to MOCERT which Hunt found provided greater value/benefit to the Township/NTPD than MOCERT.

Accordingly, I credit Hunt's testimony that his intention was to completely discontinue NTPD's participation in MOCERT in January 2017. However, based upon the request/suggestion of MOCERT Command Staff, Hunt decided to permit two NTPD officers (one operator and one technician) to continue with MOCERT until the end of 2017/beginning of 2018 in order to allow MOCERT an opportunity to retain new members as replacements. I also credit Hunt's testimony that patrol officers O'Heney, Chippendale, and Maher were removed from MOCERT in March 2017 because not having to accommodate their MOCERT-related activities would provide limited, albeit immediate, relief for the Patrol Division's manpower issues; and that Sergeant Faulhaber and detective Taylor were permitted to continue with MOCERT until the end of 2017/beginning of 2018 because accommodating their MOCERT-related activities would have no impact on the Patrol Division's manpower issues. While I also acknowledge Blewitt's testimony regarding his experience of losing NTPD

collateral assignments as he advanced within PBA leadership as relevant background information, I find it less probative than other available evidence that would have been more probative (e.g., McGhee's testimony regarding his conversations with O'Heney about the MOI course and/or being removed from MOCERT; Blewitt's rebuttal testimony regarding his conversations with Bascom in January and March/April 2017). Captain McGhee was an available witness and testified on direct examination that Hunt never indicated that he was angered by the PBA's letter and never expressed that he was holding a grudge against the PBA and/or O'Heney and Chippendale. [3T174:9-22] However, and despite the fact that the PBA had the initial burden of establishing a prima facie retaliation case, the PBA failed to cross-examine McGhee regarding his direct testimony or regarding O'Heney's hearsay statement that McGhee told him that he was being removed from MOCERT because of the PBA's letter. [2T89:19 thru 2T91:10] McGhee could have corroborated, or rebutted, O'Heney's hearsay statement and thereby substantiated or discredited Hunt's testimony. Even if O'Heney's hearsay statement is admissible under the residuum rule, I place greater weight on Hunt's testimony regarding his first-hand conversations with McGhee; and greater weight on Hunt's testimony regarding his reasons for removing

O'Heney and Chippendale from MOCERT and discontinuing NTPD's participation in MOCERT.

286. Maher became a firearms instructor after he was removed from MOCERT. Maher was also assigned to the Street Crimes Unit in January 2019. [1T95:21 thru 1T96:23; 1T163:17-22; 3T200:18 thru 3T201:13] Maher did not sign, and was not involved with, the PBA's August 15, 2016 letter. [CP-1; 1T95:21 thru 1T96:23; 1T163:23-25]
287. Blewitt testified that after Maher was removed from MOCERT, "[h]e was given special training and assigned to become a firearms instructor" which "is . . . a sought-after position within NTPD" because "[i]t's a collateral duty . . . [and] [y]ou receive training . . . and . . . go to the range and instruct other officers, and conduct their qualifications." [1T95:21 thru 1T96:23]
288. Blewitt testified that the removal of O'Heney (who wrote and signed the PBA's letter) and Chippendale (who raised issues concerning the radios/radio communications that appeared in the PBA's letter) from MOCERT has had "a detrimental effect on the PBA." Specifically, Blewitt testified that NTPD "do[esn't] have the officers that were previously trained . . . and have that investment on the [MOCERT] team anymore . . . [which] [t]he [PBA] membership felt . . . was an asset." Blewitt testified that "the [PBA] membership feels it's

retaliation" and that "it's apparent" such that there are "members that don't want to speak publicly . . . [or] to take executive positions" but who nevertheless "feed me information from below . . . because they fear retaliation."

[1T97:24 thru 1T98:17] Blewitt also testified that he was subpoenaed to appear at the hearing in this matter and that he "[was] concerned about retaliation for [his] testimony." [1T94:13 thru 1T95:2; 1T97:24 thru 1T98:24; 2T94:10-20; CP-1]

289. O'Heney and Chippendale testified that they want to return to MOCERT. [2T94:21 thru 2T95:3; 1T164:18-22] O'Heney testified that MOCERT still exists and that officers can return to the team if authorized. [2T94:21 thru 2T95:3]

290. Chief Hunt testified that since NTPD's participation in MOCERT was discontinued, O'Heney has not been offered any other roles on other teams; O'Heney has not applied for any other special teams; and O'Heney has not requested any other assignments such as firearms instructor or any other special instructor. However, O'Heney was offered a role on RDF during mediation efforts related to the instant charge. Hunt testified that O'Heney participates in the active shooter program; O'Heney has kept up with his training and done everything that's been asked of him as a NTPD officer; O'Heney has not been singled out/targeted for any specific

discipline; and O'Heney is permitted to participate in regular overtime and special duty assignments. [4T61:6 thru 4T63:6]

291. Chief Hunt testified as follows regarding O'Heney and the active shooter partnership:

- Q. So you have the active shooter partnership. And that has active shooter instructors?
- A. Yes.
- Q. And O'Heney applied to be an active shooter instructor, correct?
- A. Not that I know of.
- Q. You were not made . . . aware of that?
- A. Not that I know of.

[4T131:1-9]

L. PBA's Unfair Practice Charge

292. On April 25, 2017, the PBA filed the underlying unfair practice charge. [J-1]

STANDARD OF REVIEW

N.J.A.C. 19:14-6.8 provides:

The charging party shall prosecute the case and shall have the burden of proving the allegations of the complaint by a preponderance of the evidence. The respondent shall have the burden of establishing any affirmative defenses in accordance with the law.^{11/}

11/ N.J.A.C. 19:14-7.2 provides:

The record shall consist of the charge and any amendments; the complaint and any amendments; notice of hearing; answer and any amendments; motions; rulings; orders; any

(continued...)

N.J.A.C. 19:14-7.1 provides in pertinent part:

After the hearing or upon the parties' consent before the conclusion of the hearing, the hearing examiner shall prepare a report and recommended decision which shall contain findings of fact, conclusions of law, and recommendations as to what disposition of the case should be made, including, where appropriate, a recommendation for such affirmative action by the respondent as will effectuate the policies of the Act.

ANALYSIS

I. Retaliation

A. Legal Standard

Allegations of anti-union discrimination under N.J.S.A. 34:13A-5.4a(3) are governed by In re Bridgewater Twp., 95 N.J. 235, 240-245 (1984). "The charging party must prove, by a preponderance of the evidence on the entire record, that protected conduct was a substantial or motivating factor in the adverse action." Newark Housing Auth., P.E.R.C. No. 2016-29, 42 NJPER 237, 239 (¶67 2015). This may be done by direct evidence or by circumstantial evidence showing that the employee engaged in protected activity, the employer knew of this activity, and

11/ (...continued)

official transcript of the hearing; and stipulations, exhibits, documentary evidence, and depositions admitted into evidence; together with the hearing examiner's report and recommended decision and any exceptions, cross-exceptions, and briefs and answering briefs in support of, or in opposition to, exceptions and cross-exceptions.

the employer was hostile toward the exercise of the protected rights. Ibid. If the employer did not present any evidence of a motive not illegal under our Act, or if its explanation has been rejected as pretextual, there is sufficient basis for finding a violation without further analysis. Ibid. Sometimes, however, the record demonstrates that both motives unlawful under our Act and other motives contributed to a personnel action. Ibid. In these dual motive cases, the employer will not have violated the Act if it can prove, by a preponderance of the evidence on the entire record, that the adverse action would have taken place absent the protected conduct. Ibid.

"N.J.S.A. 34:13A-5.3 guarantees all public employees the right to engage in union activity including organizing, making their concerns known to their employer, and negotiating collectively . . . [and] it further provides that a majority representative of public employees shall be entitled to act for and represent the interest of public employees." Carteret Bor., H.E. No. 2014-12, 40 NJPER 569 (¶184 2014), adopted P.E.R.C. No. 2016-28, 42 NJPER 231 (¶66 2015).

B. O'Heney & Chippendale's Protected Activity

The PBA has established that O'Heney and Chippendale engaged in protected activity. The PBA's August 15, 2016 letter was protected under N.J.S.A. 34:13A-5.3 regardless of whether the substantive assertions therein were completely accurate. See

Jackson Tp., H.E. No. 2005-14, 31 NJPER 155 (¶69 2005), adopted P.E.R.C. No. 2006-12, 31 NJPER 281 (¶110 2005) (“[e]ven where a representative’s public comments criticizing the employer are false, the representative may still be protected from retaliation as an employee”). The Township has conceded that at least some aspects of the PBA’s letter had merit. See Finding of Fact No. 187.

O’Heney, as PBA Vice President, was the author of, and a signatory to, the PBA’s August 15, 2016 letter. See Finding of Fact No. 123. Chippendale, as a PBA member, was vocal/informative about issues concerning NTPD’s radios/radio communications and those issues appeared in writing in the PBA’s August 15, 2016 letter. See Findings of Fact Nos. 120-122, 128, 263. Moreover, the Township appears to concede that O’Heney and Chippendale engaged in protected activity. See Twp.’s Post-Hearing Br. at 6.

C. Township’s Knowledge of Protected Activity

The PBA has also established that Chief Hunt and then-Director Bascom were aware of O’Heney and Chippendale’s protected activity. Hunt and Bascom recognized the PBA’s August 15, 2016 letter as a union complaint. See Finding of Fact No. 129.

With respect to O’Heney, Hunt and Bascom acknowledged that the PBA’s letter was signed by O’Heney. See Findings of Fact Nos. 129, 166-167. During a September 1, 2016 NTPD Command Staff

meeting, Hunt and Bascom were present when Captain McGhee made a joke identifying O'Heney as the author of the PBA's letter and O'Heney confirmed that he was in fact the author. See Findings of Fact Nos. 159-164. Hunt assumed the PBA's letter "was a group effort that was coming from the heads of two unions." [4T13:8-20] Bascom assumed O'Heney wrote the PBA's letter. [3T85:13 thru 3T86:5] Bascom and Hunt knew, or should have known, that O'Heney was the author of the PBA's letter. See Finding of Fact No. 168. Moreover, the Township appears to concede that Hunt and Bascom were aware of O'Heney's protected activity. See Twp.'s Post-Hearing Br. at 6.

With respect to Chippendale, it is undisputed that he was not afraid to be vocal about his concerns regarding any issue within NTPD, including radios/radio communications. See Findings of Fact Nos. 120-122, 128, 263. In his September 1, 2016 email to Williams, Bascom asserted that the PBA's letter was based in part upon "a few members of the PBA and FOP who are aligned with a different brand of radio and are feeding the rest with nonsense regarding the Tait radios that were purchased"; however, Bascom later conceded that he was unable to identify the PBA and FOP members that he was referencing because the PBA did not specify who was complaining, just that there were PBA members who supported Motorola. [CP-7; 3T78:2 thru 3T79:5] During a February 17, 2017 NTPD Command Staff meeting, radio communication

issues were discussed and Hunt, Bascom, or Captain McGhee questioned the authenticity of the PBA's concerns and asserted that Chippendale was upset because he had a friend who worked for Motorola and did not get the bid. See Findings of Fact No. 261. Hunt assumed that the issues that Chippendale had raised regarding the radios/radio communications were reflected in the PBA's letter. [4T110:17 thru 4T113:6] Bascom conceded that the radio issue was discussed in multiple meetings up through and including February 2017. [3T109:5-10] Hunt and Bascom knew Chippendale was the PBA member who informed the radio/radio communication aspect of the PBA's letter. [1T90:13 thru 1T92:21; 2T95:4-24]

D. Township's Motivation

Notwithstanding the PBA's establishment of the first two prongs of the Bridgewater test, I find that the PBA has failed to demonstrate by a preponderance of the evidence that protected activity was a substantial or motivating factor in the Township's decision to remove NTPD patrol officers O'Heney, Chippendale, and Maher from MOCERT or to discontinue NTPD's participation in MOCERT. However, even assuming, arguendo, that the PBA has established the third prong of the Bridgewater test, I find that the Township has demonstrated by a preponderance of the evidence that NTPD patrol officers O'Heney, Chippendale, and Maher would have been removed from MOCERT, and NTPD's participation in MOCERT

would have been discontinued, absent the protected activity. The Township has established a legitimate business justification for its actions.

(i) PBA's Letter

A significant portion of the PBA's August 15, 2016 letter is dedicated to the PBA's concerns about the NTPD's Patrol Division (e.g., inadequate staffing, increasing workload with decreasing manpower, aversion to paying overtime and routine denial of requests for time off if overtime is generated; increasing amount of superfluous and time-consuming administrative tasks without any increase in manpower; inefficient allocation of manpower to Internal Affairs, Street Crimes, and on-loan assignments that eliminates patrol officers; patrol sergeants not performing their duties adequately or appropriately; degradation of quality and effectiveness of radio communications). [CP-1] In fact, O'Henev himself testified that "in 2016 there were manpower issues" and "that was part of the reason . . . why the PBA issued the letter"; that "[t]hose manpower issues caused [him] concern for the safety of [his] fellow officers"; and that there were times when "the shifts [went] below minimum manpower." [2T106:1-6]

In response, Township officials actually considered the PBA's substantive concerns about NTPD, particularly manpower issues in the Patrol Division. During the initial meeting between management and union officials after the PBA's letter was

circulated, the parties discussed MOCERT - which was in a trial/test period - as one of the outside assignments that could be curtailed/discontinued in order to address some of the PBA's concerns. While there were significant preceding and intervening events that were contributing factors, one reason that the Township ultimately decided to remove patrol officers from MOCERT and discontinue NTPD's participation in MOCERT - despite the PBA's protestations and preference for discontinuing other outside assignments - was in order to provide limited, albeit immediate, relief for the Patrol Division's manpower issues raised in the PBA's letter. See Findings of Fact Nos. 137-140, 144, 157, 179-181, 185, 187, 192, 194-199, 200, 260, 274-276, 285.

(ii) MOCERT Status, Issues and Relative Value

Chief Hunt initiated NTPD's participation in MOCERT for the first time (on a trial/test-basis) in 2014. Hunt wanted to see how MOCERT fit with NTPD and monitored MOCERT members to evaluate how they were performing as NTPD officers. Although he ramped-up NTPD's participation in MOCERT from one to five officers, Hunt's plan was to have three operators, with each one assigned to different NTPD shifts/squads and MOCERT squads. See Findings of Fact Nos. 75-76, 78-80, 84, 111-113, 194-199.

However, Hunt admitted that by 2016-2017 it had become clear to him - based in part upon issues and concerns that were raised

by Captain McGhee - that NTPD's participation in MOCERT was one of the worst decisions that he had made. While not an exhaustive list, Hunt based his conclusion on the following factors:

-while his original understanding was that there would never be a time when all of NTPD's MOCERT operators were sent to a call-out, Hunt learned in February 2016 that MOCERT had changed its policy and would be utilizing all of NTPD's MOCERT operators for call-outs which in turn would result in additional difficulties with NTPD's scheduling particularly within the Patrol Division as well as increased costs to the Township;

-while he was aware of MOCERT's training requirements in 2014, Hunt found that ensuring NTPD's MOCERT operators each attended 16 hours of training per month as well as one week of training per year (40 hours) created difficulties within the Patrol Division (e.g., although MOCERT members were only permitted to go to training when their shift was above minimum manpower, accommodating MOCERT training requests exacerbated manpower issues/inequities);

-while he was aware of MOCERT's training requirements in 2014, Hunt also found that ensuring NTPD's MOCERT operators each attended 16 hours of training per month as well as one week of training per year (40 hours) created an inequitable distribution of training opportunities among NTPD officers such that MOCERT members had substantially more training hours than non-MOCERT members;

-while he knew or should have known starting in 2015 that NTPD's MOCERT members were being given permission to participate in MOCERT training and try-outs on their own time, Hunt eventually became aware that this was occurring and discontinued the practice because he recognized that it created liability issues for the Township (e.g.,

viability of workers' compensation claims if NTPD's MOCERT members were injured while engaged in MOCERT training on their own time);

-while he initiated NTPD's participation in MOCERT on a trial/test-basis in 2014, Hunt found (based in part upon the December 5, 2016 MOCERT call-out) that the lack of formal MOCERT policies and/or NTPD's officers failure to observe informal MOCERT controls was an issue that had to be addressed immediately by issuing formal policies and guidance regarding MOCERT-related activities and ultimately by evaluating NTPD's continued participation in MOCERT;

-while he was aware that reassigning NTPD officers from MCPO, DEA and/or the Street Crimes Unit to the Patrol Division would alleviate the Patrol Division's manpower issues, Hunt found that the benefit of maintaining these assignments outweighed any detriment to the Patrol Division; in contrast, while he was aware that discontinuing NTPD officers' participation in MOCERT would provide limited, albeit immediate, relief for the Patrol Division's manpower issues, Hunt found that the benefit (if any) to the Township/NTPD of maintaining NTPD's participation in MOCERT was not outweighed by the detriment to the Patrol Division's manpower issues; and

-in 2014-2015, NTPD began participating - and ramping-up its participation - in SMCASP/ASRT, a program that was similar to MOCERT which Hunt found provided greater value/benefit to the Township/NTPD than MOCERT.

See Findings of Fact Nos. 39-48, 99, 117-118, 184- 185, 194-199, 226, 228-237, 239-246, 256-259, 264-269, 271-285.

Based upon his conclusion, Hunt's intention was to completely discontinue NTPD's participation in MOCERT in January

2017. However, at the request/suggestion of MOCERT Command Staff, Hunt decided to permit two NTPD officers (one operator and one technician) to continue with MOCERT until the end of 2017/beginning of 2018 in order to allow MOCERT an opportunity to retain new members as replacements. Hunt determined that it would be most effective to remove NTPD patrol officers from MOCERT immediately (March 2017) because not having to accommodate their MOCERT-related activities would provide limited, albeit immediate, relief for the Patrol Division's manpower issues. Hunt also determined that permitting Sergeant Faulhaber and detective Taylor to continue with MOCERT until the end of 2017/beginning of 2018 would be respectful of MOCERT's manpower concerns and the least disruptive alternative for NTPD because accommodating their MOCERT-related activities would have no impact on the Patrol Division's manpower issues. See Findings of Fact Nos. 39-48, 99, 117-118, 184- 185, 194-199, 226, 228-237, 239-246, 256-259, 264-269, 271-285.

(iii) Failure to Establish Hostility to Protected Activity as Substantial or Motivating Factor

Despite the fact that the PBA's letter was sent to Chief Hunt and then-Director Bascom in order "to open a dialogue with the administration" [1T51:4-8; 2T63:3-10; CP-5], the way in which it was presented (i.e., mode, manner, means, forum, timing) generated a predictable reaction from Township officials [Finding of Fact Nos. 186, 191]. Generally, the PBA's letter created such

consternation that the Township considered filing an unfair practice charge against the PBA, though it ultimately elected not to do so. See Finding of Fact No. 151.

More specifically, Hunt and Bascom were concerned, unhappy, and upset; their feelings about the letter were most clearly displayed during contemporaneous (and subsequent) meetings and in written correspondence. See Finding of Fact No. 191. In each of these contexts, Hunt and Bascom responded to the PBA's letter through an amalgamation of defensive behavior (Findings of Fact Nos. 157-159, 169-178, 182-183, 192-193, 200-202, 260-261) and in-kind criticism that included the use of pejorative language (e.g., they viewed the letter as "[an] attack [on] Chief [Hunt]" as well as "inappropriate and poorly time[d]"; they characterized the contents of the letter as "disingenuous", "dirty pool", "laughable", "off-base", "inaccurate", and "nonsense" [CP-7; 2T70:4-22; 3T48:16 thru 3T49:6; 4T107:24 thru 4T109:16]); consideration/review of substantive issues raised by the PBA [Findings of Fact Nos. 179-181; CP-7]; provision of responsive information to rebut certain claims [Findings of Fact Nos. 179-181; CP-7]; investigation/information gathering to immediately address claims that they perceived as having some merit and ultimately some operational changes [R-54; CP-2; CP-4; 3T269:3 thru 3T271:12; 4T13:21 thru 4T17:10; 4T16:3-7; 4T17:11 thru 4T19:19].

It is clear that the Township's response to the PBA's letter - particularly Chief Hunt and then-Director Bascom's course of conduct noted above - created at least a misperception of employer hostility to protected union activity. See Finding of Fact No. 288. Other factors that appear to have contributed to this misperception include:

- the PBA's preference for discontinuing other outside assignments and assessment regarding the relative value of MOCERT (Finding of Fact No. 185);

- the fact that MOCERT training is provided to MOCERT members at no additional cost to participating municipalities and that regardless of whether NTPD officers were permitted to participate in MOCERT, the Township had an obligation to help fund the program that was generally \$1,000 per year (Findings of Fact Nos. 67, 71);

- the fact that it is unclear what consequences (if any) would flow from a MOCERT operator's failure to attend 80% of the training exercises (Finding of Fact No. 72); and

- the fact that O'Heney and Chippendale believed they were attending the MOI course for reasons at variance with NTPD/Chief Hunt's purpose and/or what actually materialized after they completed the course (Findings of Fact Nos. 204-224).

However, in the face of overwhelming evidence demonstrating the Township's legitimate business justification for removing NTPD patrol officers O'Heney, Chippendale, and Maher from MOCERT and discontinuing NTPD's participation in MOCERT, the PBA was

unable to elicit a reliable link showing that any misperception was in fact reality.

**(iv) Failure to Corroborate Allegations/Hearsay;
Failure to Rebut First-Hand/Specific Testimony and
Evidence**

Although the PBA was able to demonstrate that Township officials - particularly Chief Hunt and then-Director Bascom - were concerned, unhappy, and upset by the PBA's August 15, 2016 letter (Finding of Fact No. 191), the PBA failed to corroborate allegations and hearsay that the Township's decision to remove NTPD patrol officers O'Heney, Chippendale, and Maher from MOCERT and to discontinue NTPD's participation in MOCERT was motivated/attributable to Hunt and/or Bascom's anti-union animus or designed to retaliate against the PBA or any of its members (Findings of Fact Nos. 217, 230-231, 256, 285). Specifically:

-with respect to the MOI course, in the face of Chief Hunt's first-hand/specific testimony, the PBA failed to cross-examine Captain McGhee regarding his direct testimony that Hunt never indicated that he was angered by the PBA's letter and never expressed that he was holding a grudge against the PBA and/or O'Heney and Chippendale or regarding O'Heney's hearsay statement that he had conversations with McGhee before/after completing the MOI course and McGhee indicated that O'Heney was not permitted to teach officer-down rescue techniques after he completed the MOI course because Hunt was upset about the PBA's letter and knew that O'Heney wrote the letter (Finding of Fact No. 217);

-with respect to NTPD officers' number of training hours, in the face of Captain

McGhee's first-hand/specific testimony, the PBA failed to call rebuttal witnesses - including Sergeant O'Donnell - to challenge the authenticity or reliability/accuracy of the NTPD Roster with Dates of Hire and Training Hours [R-126] (Findings of Fact Nos. 230-231);

-with respect to conversations between Blewitt and Bascom in January and March/April 2017, in the face of Bascom's inconsistent first-hand/specific testimony, the PBA failed to recall Blewitt in order to reiterate or clarify his testimony about the January conversation and to offer any testimony about the March/April conversation (Findings of Fact No. 256); and

-with respect to the Township's basis for removing NTPD patrol officers O'Heney, Chippendale, and Maher from MOCERT and discontinuing NTPD's participation in MOCERT, in the face of Chief Hunt's first-hand/specific testimony, the PBA failed to cross-examine Captain McGhee regarding his direct testimony that Hunt never indicated that he was angered by the PBA's letter and never expressed that he was holding a grudge against the PBA and/or O'Heney and Chippendale or regarding O'Heney's hearsay statement that McGhee told him that he was being removed from MOCERT because of the PBA's letter (Finding of Fact No. 285).

While none of these instances alone is dispositive, taken together they demonstrate the PBA's failure to establish that protected activity was a substantial or motivating factor in the Township's decision to remove NTPD patrol officers O'Heney, Chippendale, and Maher from MOCERT and to discontinue NTPD's participation in MOCERT. They also demonstrate the PBA's failure

to sufficiently refute the Township's legitimate business justification basis for its actions.

(v) Conclusion

Under these circumstances, I find that the PBA has not established by a preponderance of the evidence that protected conduct was a substantial or motivating factor in the Township's decision to remove NTPD patrol officers O'Heney, Chippendale, and Maher from MOCERT or to discontinue NTPD's participation in MOCERT. Rather, I find that the Township has demonstrated that NTPD patrol officers O'Heney, Chippendale, and Maher would have been removed from MOCERT, and that the NTPD's participation in MOCERT would have been discontinued, absent the protected conduct.

II. Interference

A. Legal Standard

Public employers are prohibited from "[i]nterfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act." N.J.S.A. 34:13A-5.4a(1). "It shall be an unfair practice for an employer to engage in activities which, regardless of the absence of direct proof of anti-union bias, tend to interfere with, restrain or coerce an employee in the exercise of rights guaranteed by the Act, provided the actions taken lack a legitimate and substantial business justification." State of New Jersey (Corrections), H.E.

2014-9, 40 NJPER 534 (¶173 2014) (citing New Jersey College of Medicine and Dentistry, P.E.R.C. No. 79-11, 4 NJPER 421 (¶4189 1978)); accord Morris Tp., P.E.R.C. 2017-21, 43 NJPER 140 (¶43 2016) (noting that proof of actual interference, intimidation, restraint, coercion or motive is unnecessary; the tendency to interfere is sufficient). The Commission has held that a violation of another unfair practice provision derivatively violates subsection 5.4a(1). Lakehurst Bd. of Ed., P.E.R.C. No. 2004-74, 30 NJPER 186 (¶69 2004).

The Commission has held that "Section 5.4a(1) cases require a balancing of two important but conflicting rights: the employer's right of free speech and the employees' rights to be free from coercion, restraint or interference in the exercise of protected rights." State of New Jersey (Trenton State College), H.E. No. 87-74, 13 NJPER 570 (¶18209 1987), adopted P.E.R.C. No. 88-19, 13 NJPER 720 (¶18269 1987). "In striking that balance, all the circumstances of a particular case must be reviewed."

Id.

In Black Horse Pike Reg. Bd. of Ed., H.E. No. 81-41, 7 NJPER 262 (¶12116 1981), adopted P.E.R.C. No. 82-19, 7 NJPER 502 (¶12223 1981), the Commission established the standard for analyzing employer speech:

A public employer is within its rights to comment upon those activities or attitudes of an employee representative which it believes are inconsistent with good labor relations,

which includes the effective delivery of governmental services, just as the employee representative has the right to criticize those actions of the employer which it believes are inconsistent with that goal. However, . . . the employer must be careful to differentiate between the employee's status as the employee representative and the individual's coincidental status as an employee of that employer.

When an employee is engaged in protected activity the employee and the employer are equals advocating respective positions, one is not the subordinate of the other. If either acts in an inappropriate manner or advocates positions which the other finds irresponsible[,] criticism may be appropriate and even legal action, as threatened here, may be initiated to halt or remedy the others actions. However, . . . where the employee's conduct as a representative is unrelated to his or her performance as an employee, the employer cannot express its dissatisfaction by exercising its power over the individual's employment.

In Crown Cent. Petroleum Corp. v. NLRB, 430 F.2d 724 (5th Cir. 1970), the Fifth Circuit Court of Appeals analyzed the contours of employer/employee speech and conduct in the labor-relations context:

The [employer] emphasizes the lack of justification for the employees' statements and the coarse nature of their language. We agree with the [NLRB] that whether the remarks were by some standard "justified" is not controlling. Here the remarks were pertinent to a discussion of the grievance under consideration at the meeting. As long as the activities engaged in are lawful and the character of the conduct is not *indefensible* in the context of the grievance involved, the employees are protected under § 7 of the act." Neither do we think the

language used by [the employees] was so opprobrious as to carry them "beyond the pale" of the Act's protection. It has been repeatedly observed that passions run high in labor disputes and that epithets and accusations are commonplace. Grievance meetings arising out of disputes between employer and employee are not calculated to create an aura of total peace and tranquility where compliments are lavishly exchanged. Adding our disclaimer to that of the [NLRB], we do not condone the conduct of [the employees] in the meeting, but we do not feel that the interests of collective bargaining will be served by the external imposition of a rigid standard of proper and civilized behavior.

Of central importance to our view of the case, is the nature of the protected activity involved. [The employees] were participating in a grievance meeting, which by its very nature requires a free and frank exchange of views, and where bruised sensibilities may be the price exacted for industrial peace. As the [NLRB] noted, a grievance proceeding is not an audience, conditionally granted by a master to his servants, but a meeting of equals -- advocates of their respective positions. [The employer representative] was not assailed with abuse on the floor of the plant where he stood as a symbol of the [employer's] authority; the characterization of the untruth came while he was appearing as a[n] [employer] advocate during a closed meeting with Union representatives.

Quoting its decision in Bettcher Manufacturing, the [NLRB] stated:

A frank, and not always complimentary, exchange of views must be expected and permitted the negotiators if collective bargaining is to be natural rather than stilted. The negotiators must be free not only to put forth demands and counterdemands, but

also to debate and challenge the statements of one another without censorship, even if, in the course of debate, the veracity of one of the participants occasionally is brought into question. If an employer were free to discharge an individual employee because he resented a statement made by the employee during a bargaining conference, either one of two undesirable results would follow: collective bargaining would cease to be between equals (an employee having no parallel method of retaliation), or employees would hesitate ever to participate personally in bargaining negotiations, leaving such matters entirely to their representatives.

We seek neither to rank improprieties or epithets, nor to unnecessarily generalize for a class of cases peculiarly tied to their facts. However, within the confines of a grievance meeting, it would require severe conduct indeed to convince us that the interests of fair give and take between equal parties to bargaining could be justifiably submerged.

[430 F.2d at 730-731.]

The Commission has also explored the line between what is protected conduct of an employee serving as a union representative and what is conduct amounting to insubordination and, thus, not protected. Carteret Bor. In State of New Jersey, Dep't of Treasury (Glover), P.E.R.C. No. 2001-51, 27 NJPER 167 (¶32056 2001) and State of New Jersey, Dep't of Human Services (Garlanger), P.E.R.C. No. 2001-52, 27 NJPER 167 (¶132057 2001), the Commission noted that consideration must be given to whether

the employee is acting in the role of a shop steward or union representative, as well as the time and place of the speech. The latter includes whether the speech or conduct is on work time and on the shop floor or a closed-door meeting, whether other employees are present, whether the actions were threatening, and whether the employee's actions were provoked by the employer's actions. In Glover, the Commission stated:

In negotiations and grievance discussions, management officials and union representatives meet as equals and exchange views freely and frankly. Passions may run high and epithets and accusations may ensue so courts have refused to impose a 'rigid standard of proper and civilized behavior' on participants and have allowed leeway for adversarial and impulsive behavior. An employer may criticize a representative's conduct at such meetings, but it may not discipline the representative as an employee when that conduct is unrelated to job performance. Despite the equality of participants in negotiations and grievance settings and despite the leeway allowed for impulsive and adversarial behavior, representational conduct may lose its statutory protection if it indefensibly threatens workplace discipline, order, and respect. To determine whether conduct is indefensible in the context of the dispute involved, it is necessary to balance the employees' heavily protected right to representation in negotiations and grievance discussions against the employer's right to maintain workplace discipline.

[27 NJPER at 167 (citations omitted)]

B. Township's Course of Conduct

Although it does not appear that an independent 5.4a(1) violation was pled, the PBA argues that the Township has independently violated subsection 5.4a(1) of the Act in its post-hearing brief. Compare PBA's Complaint [J-1] with PBA's Post-Hearing Br. at 97-99. Even assuming, *arguendo*, that an independent 5.4a(1) violation was pled, I find that the PBA has failed to demonstrate by a preponderance of the evidence that the Township's course of conduct after the PBA's August 15, 2016 letter was circulated tends to interfere with, restrain or coerce employees in the exercise of rights guaranteed by the Act. I find that the Township has established a legitimate and substantial business justification for its course of conduct.

Initially, I acknowledge that the PBA's August 15, 2016 letter was protected under N.J.S.A. 34:13A-5.3 regardless of whether the substantive assertions therein were completely accurate. See Jackson Tp., H.E. No. 2005-14, 31 NJPER 155 (¶69 2005), adopted P.E.R.C. No. 2006-12, 31 NJPER 281 (¶110 2005) ("[e]ven where a representative's public comments criticizing the employer are false, the representative may still be protected from retaliation as an employee"). The Township has conceded that at least some aspects of the PBA's letter had merit. See Finding of Fact No. 187.

Despite the fact that the PBA's letter was sent to Chief Hunt and then-Director Bascom in order "to open a dialogue with the administration" [1T51:4-8; 2T63:3-10; CP-5], the way in which it was presented (i.e., mode, manner, means, forum, timing) generated a predictable reaction from Township officials [Finding of Fact Nos. 186, 191]. Generally, the PBA's letter created such consternation that the Township considered filing an unfair practice charge against the PBA, though it ultimately elected not to do so. See Finding of Fact No. 151.

More specifically, Hunt and Bascom were concerned, unhappy, and upset; their feelings about the letter were most clearly displayed during contemporaneous (and subsequent) meetings and in written correspondence. See Finding of Fact No. 191. In each of these contexts, Hunt and Bascom responded to the PBA's letter through an amalgamation of defensive behavior (Findings of Fact Nos. 157-159, 169-178, 182-183, 192-193, 200-202, 260-261) and in-kind criticism that included the use of pejorative language (e.g., they viewed the letter as "[an] attack [on] Chief [Hunt]" as well as "inappropriate and poorly time[d]"; they characterized the contents of the letter as "disingenuous", "dirty pool", "laughable", "off-base", "inaccurate", and "nonsense" [CP-7; 2T70:4-22; 3T48:16 thru 3T49:6; 4T107:24 thru 4T109:16]); consideration/review of substantive issues raised by the PBA [Findings of Fact Nos. 179-181; CP-7]; provision of responsive

information to rebut certain claims [Findings of Fact Nos. 179-181; CP-7]; investigation/information gathering to immediately address claims that they perceived as having some merit and ultimately some operational changes [R-54; CP-2; CP-4; 3T269:3 thru 3T271:12; 4T13:21 thru 4T17:10; 4T16:3-7; 4T17:11 thru 4T19:19].

In balancing the Township's right to free speech and the PBA's right to be free from coercion, restraint or interference in the exercise of protected rights, I find that Chief Hunt and then-Director Bascom were within their rights as employer representatives to comment upon the PBA's letter as they did. See Black Horse Pike Reg. Bd. of Ed. During the closed-door NTPD Command Staff meetings on September 1, September 15, and October 27, 2016 and February 17, 2017 when the PBA's letter was discussed, the parties were essentially engaged in grievance discussions. Accordingly, Hunt, Bascom, McGhee, and Gualario (management officials) met Blewitt, O'Heney, Cox, and Claffey (union officials) as equals and were permitted to exchange views freely and frankly.

Separately, in response to a request for feedback regarding what the Township was doing to address issues raised in the PBA's letter and at the Township Committee's August meetings, Bascom sent an email [CP-7] to the Township's Mayor or the Township Committee's police liaison (Williams) and the Township's Business

Administrator (Gadaleta) that was critical of the PBA's letter; and in response to the PBA's letter itself, Hunt sent two memoranda to Blewitt and O'Heney seeking more specific information so that he could investigate certain claims made. [CP-2; CP-4]. Again, management officials were either communicating amongst themselves or were engaged in grievance discussions with union officials. Accordingly, they met as equals and were permitted to exchange views freely and frankly.

Hunt and Bascom were free to criticize the conduct of PBA/FOP representatives and/or the presentation (i.e., mode, manner, means, forum, timing) and content of the PBA's letter; they were also free to investigate and gather more information in an effort to immediately address issues that they perceived as having some merit. Hunt and Bascom did not threaten the employment status of Blewitt, O'Heney, Cox, Claffey or any other PBA/FOP member during any meeting or in any correspondence. No evidence was adduced that any PBA/FOP member was disciplined as a result of those meetings or the PBA's letter. Moreover, Hunt and Bascom's defensive behavior, in-kind criticism, and correspondence was precipitated by the way in which the PBA's letter was presented as well as certain substantive issues that they found absurd or meritorious. See Willingboro Bd. of Ed., H.E. No. 88-60, 14 NJPER 434 (¶19178 1988), adopted P.E.R.C. No. 89-49, 14 NJPER 691 (¶19294 1988) (the Commission held that frank

telephone discussions, as well as a frank letter, between the superintendent and union president did not violate the Act because "[a] public employer has a right to express opinions about labor relations provided such statements are noncoercive", particularly when both parties are "aware of the full context" and they engage in dialogue outside the presence of "other unit members uninvolved in the dispute"); see also Carteret Bor.; State of New Jersey, Dep't of Treasury (Glover); State of New Jersey, Dep't of Human Services (Garlanger).

Here, just as the presentation and merits of the PBA's letter can be evaluated for their propriety and efficacy, so too can the defensive behavior, in-kind criticism, and correspondence of management officials. However, as Fifth Circuit explained,

Grievance meetings arising out of disputes between employer and employee are not calculated to create an aura of total peace and tranquility where compliments are lavishly exchanged. . . . [While] we do not condone the conduct of [the employer representatives] in the meeting[s] [or in correspondence], . . . we do not feel that the interests of collective bargaining will be served by the external imposition of a rigid standard of proper and civilized behavior.

[Crown Cent. Petroleum Corp., 430 F.2d at 730-731.]

The Commission has "accept[ed] the principle that wide latitude in terms of offensive speech and conduct . . . must be allowed in the context of grievance proceedings to [e]nsure the efficacy of

this process.” Hamilton Tp. Bd. of Ed., H.E. No. 79-23, 4 NJPER 470 (¶4213 1978), rev'd P.E.R.C. No. 79-59, 5 NJPER 115 (¶10068 1979), recon. den. P.E.R.C. No. 79-74, 5 NJPER 188 (¶10105 1979).

Under these circumstances, and the for reasons set forth above regarding the Township's legitimate business justification for removing NTPD patrol officers O'Heney, Chippendale, and Maher from MOCERT and discontinuing NTPD's participation in MOCERT, I find that the PBA has failed to demonstrate by a preponderance of the evidence that the Township's course of conduct after the PBA's August 15, 2016 letter was circulated tends to interfere with, restrain or coerce employees in the exercise of rights guaranteed by the Act. I find that the Township has established a legitimate and substantial business justification for its course of conduct.

CONCLUSION

For these reasons, I find that the Township of Neptune did not violate N.J.S.A. 34:13A-5.4a(3) or N.J.S.A. 34:13A-5.4a(1) by removing NTPD patrol officers O'Heney, Chippendale, and Maher from MOCERT and discontinuing NTPD's participation in MOCERT.

RECOMMENDED ORDER

I recommend that the Complaint be dismissed.

/s/ Joseph P. Blaney
Joseph P. Blaney
Hearing Examiner

DATED: March 5, 2020
Trenton, New Jersey

Pursuant to N.J.A.C. 19:14-7.1, this case is deemed transferred to the Commission. Exceptions to this report and recommended decision may be filed with the Commission in accordance with N.J.A.C. 19:14-7.3. If no exceptions are filed, this recommended decision will become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further. N.J.A.C. 19:14-8.1(b).

Any exceptions are due by March 16, 2020.