

P.E.R.C. NO. 83-163

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CAMDEN,

Respondent,

-and-

Docket No. CO-81-294-168

CAMDEN CITY POLICE SUPERIOR
OFFICERS ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission affirms an Administrative Law Judge's dismissal of a Complaint based on an unfair practice charge the Camden City Police Superior Officers Association filed against the City of Camden. The charge had alleged that the City violated the New Jersey Employer-Employee Relations Act when it discharged Sergeant Richard D'Auria, a police officer and president of the Association. The charge was consolidated with D'Auria's appeal to the Civil Service Commission of his removal. With respect to the Civil Service appeal, the Administrative Law Judge found, and the Civil Service Commission agreed, that D'Auria had engaged in certain acts of misconduct, but that removal, rather than a six month suspension without back pay, was too severe a punishment. With respect to the unfair practice charge, the Administrative Law Judge found, and the Commission agreed, that the City proved that it would have sought D'Auria's removal even absent his protected activity in light of grand jury findings of misconduct against D'Auria and an assignment judge's order to institute disciplinary charges.

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Docket No. CO-81-294-168

CAMDEN CITY POLICE SUPERIOR
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Charging Party.

Appearances:

For the Respondent, Murray & Granello, Esqs.
(James P. Granello, of Counsel)

For the Charging Party, Thomas M. Barron, Esq.

DECISION AND ORDER

On April 9, 1981, the Camden City Police Superior Officers Association ("Association") filed an amended unfair practice charge against the City of Camden ("City") with the Public Employment Relations Commission. The charge alleged that the City violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsections 5.4 (a) (1) and (3),^{1/} when on October 24, 1980, it discharged Sergeant Richard D'Auria, a police officer and president of the Association. The charge alleged that the City illegally discharged

1/ These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; and (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act."

D'Auria because he had filed unfair practice charges with the Commission, filed a lawsuit challenging a contract between the parties, and pursued several grievances to arbitration.^{2/}

On June 12, 1981, the Director of Unfair Practices issued a Complaint and Notice of Hearing pursuant to N.J.A.C. 19:14-2.1. The City filed an Answer in which it denied that it discharged D'Auria because of his Association activities.

Before the Association filed its unfair practice charge, D'Auria had appealed his removal to the Civil Service Commission. This appeal was then transmitted to the Office of Administrative Law for a hearing before Administrative Law Judge Robert W. Scott. The unfair practice charge was then consolidated with the Civil Service appeal. However, when the scope and amount of testimony became apparent, Judge Scott bifurcated the issues and proofs and first conducted a hearing on the Civil Service appeal.

On December 23, 1982, Judge Scott issued his Initial Decision concerning D'Auria's Civil Service appeal. OAL Docket No. CSV 98-81 (copy attached). Judge Scott found that the City met its burden of proving that D'Auria had engaged in certain acts of misconduct including managing a dance agency and a lounge serving alcoholic beverages without first securing the approval of the police chief and testifying falsely (but without criminal intent) before a Grand Jury. He held, nevertheless, that removal was too severe a punishment. He ordered that D'Auria

^{2/} The Association's original charge, filed March 30, 1981, did not specify the alleged nature of D'Auria's protected activity.

be suspended for six months, be reinstated effective February 21, 1983, and be denied back pay.

On April 15, 1983, the Civil Service Commission issued its Final Administrative Action (copy attached). It adopted all Judge Scott's recommendations. The City has appealed this decision.

Based upon the facts Judge Scott found in his Civil Service appeal decision, the City moved for summary judgment on the unfair practice charge. On April 26, 1983, Judge Scott issued his Initial Decision concerning the unfair practice charge. OAL Docket No. PERC 3833-81 (copy attached). Applying East Orange Public Library v. Taliaferro, 180 N.J. Super. 155 (App. Div. 1981) ("East Orange"), he concluded that although the Association had established a violation of N.J.S.A. 34:13A-5.4 (a) (1) and (3) by showing that the City's Mayor had attempted to remove D'Auria because of his activities as a union leader, the factors which primarily, if not solely, motivated the City's specifications of misconduct against D'Auria were the findings of the Camden County Grand Jury that D'Auria had engaged in certain acts of misconduct and an order from the Camden County Superior Court assignment judge that disciplinary charges be considered against D'Auria and that the Camden County Prosecutor's Office represent the City in any disciplinary hearings. He specifically found that the Mayor's desire to remove D'Auria had no connection with the grand jury proceedings (instituted at D'Auria's request), the grand jury's findings of misconduct, the assignment judge's order, or the

subsequent specifications of misconduct and removal. He granted summary judgment for the City and dismissed the Complaint.

Both the City and the Association have filed Exceptions. The Association argues that: (1) this matter is not ripe for determination pursuant to N.J.A.C. 1:1-13.2; (2) the factual findings indicate a violation of both the Association's and D'Auria's rights; and (3) Judge Scott improperly relied upon Wright Line, 251 NLRB 1083, 105 LRRM 1169 (1980), aff'd as modified 662 F.2d 899 (1st Cir. 1981), cert. den. 71 L.Ed2d 848 (3/1/82) ("Wright Line"). The City objects to Judge Scott's finding that it violated subsections 5.4(a)(1) and (3), arguing that such a finding is inconsistent with East Orange and his ultimate decision to dismiss the complaint.

We have reviewed the record before us.^{3/} In the absence of specific Exceptions to Judge Scott's findings of fact in his Initial Decisions, we adopt and incorporate his findings here.

We agree with Judge Scott that this matter can be properly disposed of by summary judgment. The unfair practice charge alleges only that D'Auria was removed because of his Association activities. The parties fully litigated the reasons for D'Auria's removal at the Civil Service hearing, and Judge Scott made extensive findings of fact which have not been specifically challenged. In particular, the Association has

^{3/} We note that there is no transcript of the Civil Service hearing in the record since the Civil Service Commission does not routinely order its hearings transcribed.

not alleged any specific factual basis for placing into dispute Judge Scott's determination that the primary or sole motivating factors in the specification of charges against D'Auria were the grand jury findings of misconduct and the order of the assignment judge to institute such proceedings and to have the County Prosecutor's Office represent the City in those proceedings.

We also agree with Judge Scott that the City proved that even in the absence of his protected activity, it would have removed D'Auria because of the grand jury findings of misconduct and the order of the assignment judge. Judge Scott properly relied upon Wright Line in this regard since East Orange embraced the Wright Line standards as the law of the New Jersey public sector. See also, In re Black Horse Pike Reg. Bd. of Ed., P.E.R.C. No. 83-73, 9 NJPER 36 (¶14017 1982); In re County of Bergen-Operating Pines County Hosp., P.E.R.C. No. 83-117, 8 NJPER 360 (¶13165 1982); In re Township of Bridgewater, P.E.R.C. No. 83-36, 7 NJPER 600 (¶13367 1981), aff'd App. Div. Docket No. A-859-81T1 (6/21/82), pet. for certif. granted, Supreme Court Docket No. C-108 (10/19/82).^{4/}

Finally, we disagree with Judge Scott to the limited extent he found, even though he dismissed the Complaint, that the City violated subsections 5.4(a)(1) and (3). We agree with Judge Scott that the Association established a prima facie case of a violation of subsections 5.4(a)(1) and (3) by introducing evidence showing that the Mayor attempted to remove D'Auria from his position because of his Association activities. If the

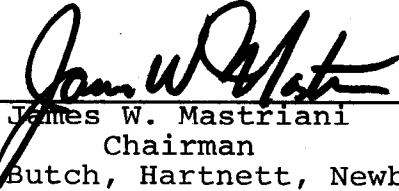
^{4/} On June 15, 1983, the United States Supreme Court unanimously approved the standards the National Labor Relations Board adopted in Wright Line. See NLRB v. Transportation Management Co., ___ U.S. ___, 113 LRRM 2857 (1983).

City had not rebutted this prima facie case, we would have found a violation of these subsections. Under East Orange and Wright Line, however, an employer which can prove in response to a prima facie case that it would have taken the same personnel action in the absence of protected activity acquits itself of all liability for that personnel action. Here, the unfair practice charge only challenges D'Auria's discharge and the City, in successfully rebutting the Association's prima facie case, has proved that it would have taken this personnel action despite D'Auria's protected activity. Accordingly, we strike that portion of Judge Scott's conclusion stating that the City violated N.J.S.A. 34:13A-5.4(a)(1) and (3) and dismiss the Complaint.

ORDER

Judge Scott's Initial Decision dismissing the Complaint is affirmed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hartnett, Newbaker and Suskin voted in favor of this decision. Commissioner Hipp voted against the decision and Commissioner Graves abstained.

DATED: Trenton, New Jersey
June 24, 1983
ISSUED: June 27, 1983



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. PERC 3833-81

AGENCY DKT. NO. C0-81-294-168

**CAMDEN CITY POLICE
SUPERIOR OFFICERS ASSOCIATION,**

Petitioner

v.

CITY OF CAMDEN,

Respondent.

APPEARANCES:

Thomas M. Baron, Esq., for the petitioner

James P. Granello, Esq., for the respondent (Murray & Granello, attorneys)

Record Closed: April 4, 1983

Decided: April 26, 1983

BEFORE ROBERT W. SCOTT, ALJ:

This matter concerns the charge by the petitioner that the respondent committed an unfair labor practice in removing the petitioner's president from his position as a sergeant with the Camden City Police Department.

PROCEDURAL HISTORY

Richard A. D'Auria, Sergeant, Camden City Police Department, and President of the Camden City Police Superior Officers Association, received a preliminary notice of disciplinary action from the respondent on August 25, 1980. He received final notice of

disciplinary action on October 22, 1980, and was removed from his position as sergeant with the Camden City Police Department. On November 10, 1980, he appealed his removal to the Civil Service Commission. This appeal was transmitted to the Office of Administrative Law on January 8, 1981, as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. On April 9, 1981, the petitioner filed a charge of an unfair practice with the Public Employment Relations Commission (PERC). On June 12, 1981, PERC issued a complaint to the respondent and also issued a letter to the Office of Administrative Law recommending that the civil service matter and the unfair practice charge be consolidated for a single hearing. Although the civil service appeal and the PERC charge were initially consolidated, when the scope and amount of testimony became apparent, the issues and proofs were bifurcated. After a full hearing on the civil service appeal, the record on that matter was closed on December 1, 1982, and on December 23, 1982, an Initial Decision was rendered in that matter. Receipt was acknowledged by the Civil Service Commission of that Initial Decision on December 27, 1982. Based upon that Initial Decision, the respondent has made a motion for summary judgment concerning the complaint issued by PERC.

STATEMENT OF FACTS

As a result of charges of corruption leveled by Sergeant D'Auria, a Camden County Grand Jury was convened and took testimony during the early part of 1980. Although no true bills were issued by this grand jury, the assignment judge for Camden County issued an order that a complete transcript of the testimony taken during the grand jury investigation as well as tape recordings produced for the grand jury would be forwarded to the Camden City Chief of Police and Director of Public Safety for action they deemed appropriate. The assignment judge's order further provided that the Camden County Prosecutor's Office would represent the respondent in any disciplinary hearings arising out of any action taken by the Chief or the Director of Public Safety.

Thereafter, Sergeant D'Auria was charged by the Director of Public Safety with violations of the New Jersey Administrative Code and Camden City Police Department regulations and general orders. This was done even though it provided in the Camden City Police Department rules and regulations as well as in the collective bargaining agreement with the respondent that such action should be taken by the chief of the department. The initial decision issued in the Civil Service appeal of Sergeant D'Auria found that he did in fact violate provisions of the New Jersey Administrative Code and the regulations and general orders of the Camden City Police Department.

Also during the course of the hearing concerning Sergeant D'Auria's civil service appeal, there was evidence which would support findings that the mayor of the city of Camden, during the early part of 1980, sought to remove Sergeant D'Auria from his position as a sergeant with the Camden City Police Department because of D'Auria's statements and actions as president of the petitioner. There was evidence that the mayor sought the assistance of other members of the Camden City Police Department, including the president of another collective bargaining agent within the Camden City Police Department, to investigate Sergeant D'Auria in an effort to have him removed from the police department. The evidence during the hearing also indicated that Sergeant D'Auria cooperated with the grand jury and provided tape recordings to the grand jury because of this attempted investigation of his activities.

APPLICABLE LAW AND REGULATIONS

The petitioner has charged that the respondent violated N.J.S.A. 34:13A-5.4(a)1, 3. N.J.S.A. 34:13A-5.4(a)1 prevents public employers from interfering with, restraining or coercing employees in the exercise of their rights guaranteed them under the statute. N.J.S.A. 34:13A-5.4(a)3 prevents public employers from discriminating in regards to hiring or the tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of their rights under the statute.

To determine the position of PERC as to how the above statute has been interpreted when applying it to an employer's motivation for removing an individual from his position, the approach approved by the Commission is known as the Wright Line test. The Wright Line case, 251 NLRB 1083 (1980), affirmed as modified 662 F. 2d 899 (First Circuit 1981), cert. denied 71 L. Ed. 2d 848 (1982) involved alleged violations of the Federal Labor Management Relations Act. That case held that the complaining party must make a prima facie case showing sufficient evidence to support the inference that the protected conduct was a motivating factor in the employer's decision to remove an employee. Assuming the complaining party could make this prima facie case, the burden then shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct.

This test was approved by the Appellate Division in East Orange Public Library v. Taliaferro, 180 N.J. Super. 155, 163 (App. Div. 1981). As applied by this decision, the employee must establish that union activity was a motivating factor for the employer's

conduct. It is not enough that the activity may have been triggered or was casually connected to the termination of employment. The employer must then go forward and establish by a preponderance of the evidence that its action was based on cause, and that it was not in retaliation for protected activity. PERC adopted the Wright Line test in Madison Bd. of Ed., 7 NJPER 12, 302 (1981) and in Bergen Pines Cty. Hospital, 8 NJPER 13165 (1982).

LEGAL DISCUSSION

In the instant case, therefore, two burdens must be met. First, the petitioner must establish that anti-union animus was a motivating factor in the disciplinary action taken against Sergeant D'Auria. Since this matter is being decided on a motion by the respondent without a formal hearing, it will be assumed that the petitioner has met this burden. As indicated above, during the hearing involving Sergeant D'Auria's civil service appeal, there was evidence to support a finding that the mayor of the city of Camden and other members of the Camden City Police Department took action to interfere, restrain and coerce Sergeant D'Auria in the exercise of his rights as president of the petitioner. These actions were taken in an effort to terminate Sergeant D'Auria from his position and to discourage him in exercising his rights as president of the petitioner.

Assuming this, the burden then shifts to the respondent to show that the disciplinary action taken against Sergeant D'Auria would have taken place even in the absence of this unfair labor practice. During the course of the civil service appeal, there was not one shred of evidence that the mayor of the city of Camden nor any of the police officers involved in the investigation of Sergeant D'Auria because of his union activities had anything to do with the disciplinary action taken against Sergeant D'Auria. The evidence in the civil service hearing showed that the primary, if not the only motivating factor for the disciplinary action was the County Grand Jury investigation and the order of the Superior Court assignment judge. The respondent had no other alternative but to comply with the order of the assignment judge and with the instructions of the Camden County Prosecutor. The evidence supporting the respondent's action came from the grand jury proceedings and was based primarily on tapes provided by Sergeant D'Auria himself. These tapes alone were the motivating factor which led the prosecutor's office to call the individuals who testified during the grand jury proceedings. There was no evidence which connected the unfair labor practice to the production of this evidence.

FINDINGS

Based upon the evidence before me and for the purposes of resolving the respondent's motion to dismiss the petitioner's complaint, I make the following findings. The mayor of the city of Camden sought evidence against the president of the petitioner in an effort to remove him from his position as a sergeant with the Camden City Police Department because of his union activities. The mayor obtained the assistance of other members of the Camden City Police Department in attempting to obtain evidence against the president of the petitioner so that he could be removed from his position as sergeant because of his union activities. The president for the petitioner, Sergeant D'Auria, sought an investigation of the Camden City administration and produced evidence before a Camden County Grand Jury. Although this grand jury returned no indictments, it did make findings of misconduct on the part of Sergeant D'Auria, and it recommended that the respondent take disciplinary action against Sergeant D'Auria. The Camden County Superior Court assignment judge issued an order to the respondent that disciplinary charges be considered against Sergeant D'Auria and ordered that the Camden County Prosecutor's Office would act as counsel for the respondent during these disciplinary actions.

CONCLUSION

I **CONCLUDE** for the purposes of this motion to dismiss and for summary judgment that the respondent violated N.J.S.A. 34:13A-5.4(a)1, 3 by interfering with and restraining or coercing the petitioner's president while in the exercise of his rights as a union leader in an effort to remove him from his position as a sergeant with the Camden City Police Department. However, I further **CONCLUDE** that the motivating factor for the charges against Sergeant D'Auria which resulted in disciplinary action being taken against him was the evidence and findings of the Camden County Grand Jury and the order of the Camden County Superior Court assignment judge. Therefore, it is **ORDERED** that the petitioner's complaint shall be **DISMISSED** and judgment shall be entered in behalf of the respondent.

This recommended decision may be affirmed, modified or rejected by the CHAIRMAN OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, JAMES W. MASTRIANI, who by law is empowered to make a final decision in this matter. However, if Saul Cooperman does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby FILE my Initial Decision with JAMES W. MASTRIANI for consideration.

Apr 26, 1983
DATE

Robert W. Scott
ROBERT W. SCOTT, ALJ

Receipt Acknowledged:

4-26-83
DATE

Agnes Bickel
PUBLIC EMPLOYMENT RELATIONS COMMISSION

Mailed To Parties:

April 28, 1983
DATE

Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW

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STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION

In the Matter of
Richard D'Auria

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FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

Disciplinary Appeal

ISSUED: April 15, 1983

The appeal of Richard D'Auria, Police Sergeant, Police Department, City of Camden, removal effective October 24, 1980, on charges, was heard by Administrative Law Judge Robert W. Scott, who rendered his initial decision on December 23, 1982. Exceptions and cross exceptions were filed on behalf of the appointing authority and by appellant.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission at its meeting on April 11, 1983, accepted and adopted the as contained in the attached Administrative Law Judge's initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing appellant was not justified. The Commission therefore modifies that action and Orders that appellant be reinstated following a six (6) month suspension. The Commission further Orders that appellant not be awarded back pay for the period following the suspension to the date of actual reinstatement.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE CIVIL
SERVICE COMMISSION ON APRIL 11, 1983

Eugene J. McCaffrey, Sr.
President
Civil Service Commission

**Inquiries
and
Correspondence**

**Peter J. Calderone, Director
Division of Appellate Practices
and Labor Relations
CN 312
Trenton, New Jersey 08625**

attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 98-81

AGENCY DKT. NO. —

RICHARD A. D'AURIA,

Petitioner

v.

CAMDEN CITY POLICE

DEPARTMENT,

Respondent.

APPEARANCES:

Richard A. D'Auria, petitioner, Pro Se

William C. O'Brien, Jr., Esq. on behalf of the respondent

Record Closed December 1, 1982

Decided December 23, 1982

BEFORE ROBERT W. SCOTT, ALJ:

The petitioner, Richard A. D'Auria, Sergeant, Camden City Police Department, requests relief from his removal on charges that he violated N.J.A.C. 4:1-16.9(a)1, 4, 7, and 11; that he violated Camden City Police Department Rules 1.2.104, 127, 131, 132, 146, 149, and 128, and Rule 1.11.118, 119, 120, 140, 141, 162, and 168; and that he violated Camden City Police Department General Order 79-1. The specific specifications pertaining to these charges will be listed later in the opinion. The petitioner received Preliminary Notice of Disciplinary Action on August 25, 1980. He received Final Notice of Disciplinary Action on October 22, 1980. On November 10, 1980, the petitioner appealed his removal to the Civil Service Commission. On December 2, 1980, the Civil Service Commission directed that a hearing be held on the petitioner's appeal and on

January 8, 1981, the matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

SPECIFICATIONS AGAINST THE PETITIONER

The following is a list of specifications against the petitioner.

SPECIFICATION NO. 1

In that in or about 1976, [petitioner] did reveal to and inform the person then manager of Minnie's Lounge, an establishment serving alcoholic beverages located in the City of Camden, that Detective Edwin J. Figueroa, then assigned to the Camden County Narcotics Strike Force, was a law enforcement officer at a time when Detective Figueroa was on assignment at Minnie's Lounge in civilian attire and said manager did confront Detective Figueroa; such conduct also being part of a course of conduct by [petitioner] indicating that he has little or no regard for his responsibility as a member of the Camden Division of Police and a superior officer.

SPECIFICATION NO. 2

In that while in or near Ft. Lauderdale, Florida, [petitioner], while a member of the Division of Police and a superior officer, did purchase a small quantity of the controlled dangerous substance marijuana from one Joe Foz; such conduct also being part of a course of conduct by [petitioner] indicating that he had little or no regard for his responsibility as a member of the Camden Division of Police and a superior officer.

SPECIFICATION NO. 3

In that [petitioner] in or about 1975, 1976, and 1977, was employed by and/or did assist in the management of and/or managed, for compensation or other benefit, a dance agency known as and doing business as Dancers Unlimited; such conduct also being part of a course of conduct by [petitioner] indicating that he has little or no regard for his responsibility as a member of the Camden Division of Police and a superior officer.

SPECIFICATION NO. 4

In that from about 1977 to in or about 1980, [petitioner] did manage or assist in managing, for compensation or other benefit, a dance agency known as and doing business as Dancers Number One; such conduct also being part of a course of conduct by [petitioner] indicating that he has little or no regard for his responsibility as a member of the Division of Police and a superior officer.

SPECIFICATION NO. 5

In that on diverse days during or about 1978, 1979, and 1980, [petitioner] did frequent Minnie's Lounge, an establishment serving alcoholic beverages, located in the City of Camden in uniform and not in the immediate performance of his police duties; such conduct also being part of a course of conduct by [petitioner] indicating that he has little or no regard for his responsibility as a member of the Camden Division of Police and a superior officer.

SPECIFICATION NO. 6

In that from or about December 1978, to in or about 1980, [petitioner] did manage or assist in managing and/or was employed at, for compensation or other material benefit, Minnie's Lounge, an establishment serving alcoholic beverages located in the City of Camden, in direct violation of Camden Division of Police and/or Division of Alcoholic Beverage Control Rules and Regulations (N.J.A.C. 13, Subtitle B, 13:2-23.31); such conduct being also part of a course of conduct by [petitioner] indicating that he has little or no regard for his responsibility as a member of the Camden Division of Police and a superior officer.

SPECIFICATION NO. 7

In that from and including February 26, 1979 to in or about 1980, [petitioner] did manage or assist in managing a dance agency known as and doing business as Dancers Number One without properly requesting approval and receiving approval from the Police Chief as required by General Order 79-1; such conduct by [petitioner] also being part of a course of conduct indicating that he has little or no regard for his responsibility as a member of the Camden Division of Police and a superior officer.

SPECIFICATION NO. 8

In that from and including February 26, 1979 to in or about 1980, [petitioner] did manage or assist in managing and/or was employed at Minnie's Lounge, an establishment serving alcoholic beverages located in the City of Camden, without properly requesting approval and receiving approval from the Police Chief as required by General Order 79-1; such conduct also being part of a course of conduct by [petitioner] indicating that he has little or no regard for his responsibility as a member of the Camden Division of Police and a superior officer.

SPECIFICATION NO. 9

In that during the year of 1979, [petitioner] was aware that and had personal knowledge that a female child of or about ten years of age was given an intoxicating beverage at Minnie's Lounge, an establishment serving alcoholic beverages located in the City of Camden, which [petitioner] frequented, and he failed to take appropriate action and he failed to report this incident to his

superiors, such conduct or omission by [petitioner] also being part of a course of conduct indicating that he has little or no regard for his responsibility as a member of the Division of Police and a superior officer.

SPECIFICATION NO. 10

In that in and during the years of 1978 and/or 1979 and/or 1980, [petitioner] was aware that and had personal knowledge that individuals, in particular the dancers, who frequented or worked at Minnie's Lounge, an establishment serving alcoholic beverages located in the City of Camden, which [petitioner] frequented, used the controlled dangerous substance marijuana. Petitioner then failed to take any appropriate action and failed to report to his superiors or the Police Chief on the use of marijuana at Minnie's Lounge; said conduct or omission by [petitioner] being part of a course of conduct indicating that he has little or no regard for his responsibility as a member of the Division of Police and a superior officer.

SPECIFICATION NO. 11

In that in or about 1979 and 1980, on one or more occasions, [petitioner] did smoke the controlled dangerous substance marijuana in the office at Minnie's Lounge, Camden, New Jersey; such conduct also being part of a course of conduct by [petitioner] indicating that he had little or no regard for his responsibility as a member of the Camden Division of Police and a superior officer.

SPECIFICATION NO. 12

In that from or about January 1979, to in or about March 1980, [petitioner] did regularly purchase small quantities of the controlled dangerous substance marijuana, approximately one (1) ounce more or less, from a woman employed as a bartender at Minnie's Lounge, Camden, New Jersey; such conduct also being part of a course of conduct by [petitioner] indicating that he has little or no regard for his responsibility as a member of the Camden Division of Police and a superior officer.

SPECIFICATION NO. 13

In that in or about 1979, on several occasions, [petitioner] did smoke the controlled dangerous substance marijuana at his apartment located at Myrtle Place Apartments, Camden, New Jersey; such conduct also being part of a course of conduct by [petitioner] indicating that he has little or no regard for his responsibility as a member of the Camden Division of Police and a superior officer.

SPECIFICATION NO. 14

In that between June 1978 and July 1979, [petitioner] did on one occasion offer a female dancer employed at Minnie's Lounge in Camden the controlled dangerous substance quaalude which she did

then consume; such conduct also being part of a course of conduct by [petitioner] indicating that he has little or no regard for his responsibility as a member of the Camden Division of Police or a superior officer.

SPECIFICATION NO. 15

In that between June 1978 and July 1979, [petitioner] did, in the presence of a female dancer employed at Minnie's Lounge in Camden, consume the controlled dangerous substance(s) quaalude and/or methamphetamine, such conduct also being part of a course of conduct by [petitioner] indicating that he has little or no regard for his responsibility as a member of the Camden Division of Police or a superior officer.

SPECIFICATION NO. 16

In that in or about February 1980, [petitioner] did refuse to obey the order of Detective Richard Arensberg, Internal Affairs Unit, made pursuant to the authority of General Order 74-1, to submit to him the documentary and recorded evidence, in [petitioner]'s possession, to support [petitioner]'s allegations of vice and/or corruption in the City of Camden, the City administration, and the Division of Police; such conduct also being part of a course of conduct by [petitioner] indicating that he has little or no regard for his responsibility as a member of the Camden Division of Police and a superior officer.

SPECIFICATION NO. 17

In that in or about March 1980, [petitioner] did attempt to influence and/or tamper with a witness prior to her testimony in the matter of State of New Jersey v. Fekete, et als., before the United States District Court for the District of New Jersey at Camden (Criminal No. 79-408), sitting as a court of the State of New Jersey; such conduct also being part of a course of conduct by [petitioner] indicating that he has little or no regard for his responsibility as a member of the Camden Division of Police and a superior officer.

SPECIFICATION NOS. 18-24

In that on or about March 28, 1980, while testifying under oath in State of New Jersey v. Fekete, et als. before the United States District Court for the District of New Jersey at Camden (Criminal No. 79-408), sitting as a Court of the State of New Jersey, Honorable Stanley S. Brotman presiding, [petitioner] did knowingly make false statements as follows:

- (18) in response to the question "are you or have you ever been the manager of Minnie's Tavern?", he answered "(n)o, I have not." (transcript p. 127) when in fact he was at the time or had been employed at Minnie's Lounge in a managerial capacity;

- (19) in response to the question "(d)o you now have or have you ever had any interest in Minnie's Lounge?", he answered, "(n)o", (transcript p. 127), when in fact he had or he had had a financial interest in Minnie's Lounge;
- (20) in response to the subsequent question, "(W)ere you ever the manager of Minnie's Tavern?", he answered, "(n)o, I was not", (transcript at p. 139) when in fact he was at the time or had been employed at Minnie's in a managerial capacity;
- (21) in response to the question, "(y)ou have no control over it (Minnie's Lounge) whatsoever?", he answered, "I had a certain degree of control when Mr. (Don) Manno asked me to put an agent in there (Minnie's Lounge)", (transcript at p. 139) when in fact Mr. Manno had never asked him to put an agent in Minnie's Lounge;
- (22) in response to the question, "(h)e (Mr. Manno) asked you to put agents in there (Minnie's Lounge), is that correct?" he answered, "(y)es," (transcript p. 139) when in fact Mr. Manno had never asked him to put agents in Minnie's Lounge;
- (23) in response to the question, "(d)id you ever close the registers at Minnie's", he answered, "(n)o," (transcript p. 140) when in fact he had counted out and/or closed the registers at Minnie's;
- (24) in response to the question, "(d)id you ever receive any money directly or indirectly from Minnie's Tavern?", he answered, "(n)o, Sir", (transcript p. 140), when in fact he was receiving or had received money as a result of his association with and/or employment at Minnie's Lounge.

SPECIFICATION NOS. 25-33

In that on or about June 16, 1980, while testifying under oath before the Camden County Grand Jury, [petitioner] did knowingly make false statements as follows:

- (25) in response to the question "(d)id you, at anytime, try to solicit Patty Phillips (Hoyer) to start this business (a dancers agency) and run it for you?", he answered, "(o)n her own - (o)r run it for me -no", (Grand Jury transcript, June 16, 1980, p. 49), when in fact he had solicited Patty Phillips Hoyer to run a dancers agency and/or she did in fact run a dancers agency with and/or for him;
- (26) in response to the question "(d)id you ever try to solicit Patty (Hoyer) to do this work for you and start up this

business (a dancers agency) through her husband (Police Officer Michael Hoyer)", he answered "(n)o," (GJ transcript, June 16, 1980, p. 50) when he had in fact solicited Patty Hoyer's assistance through Michael Hoyer;

- (27) in response to various questions, he did testify that he had nothing to do with a dancers agency and that he received no money or compensation from a dancers agency (GJ transcript, June 16, 1980, pp. 49-51) when in fact he helped to establish and/or manage a dancers agency known as Dancers Number One and received money from its operation;
- (28) in that in answer to the question, "you are the real owner of Dancers Number One, and was a partner or involved in running Dancers Unlimited...(I)s that true?", he answered, "I gave people assistance such as driving, advice, etc. the employ, own, share a profit in, take money from, no", (GJ transcript, June 16, 1980, p. 64), when in fact he did run, help run, and share a profit or receive money from both agencies;
- (29) in response to various questions he did testify that his only connection with Minnie's Lounge, Camden, was to create the impression that he was manager and had a say in running the business, (GJ transcript, June 16, 1980, pp. 64-85), when in fact he was or had been a manager for compensation at Minnie's Lounge;
- (30) in that he testified, "I never hired or fired a barmaid (at Minnie's Lounge)", (GJ transcript, June 16, 1980, p. 79), when in fact he had hired and/or fired a barmaid at Minnie's Lounge;
- (31) in that he testified "(I) never counted out a register (at Minnie's)", (GJ transcript, June 16, 1980, p. 79), when he did or had in fact counted out registers at Minnie's Lounge;
- (32) in that he testified, "(d)id I ever arrange (work) schedules (for barmaids)? -No", (GJ transcript, June 16, 1980, p. 80) when he did or had in fact arranged work schedules;
- (33) in that he testified "(w)hat I am saying, I didn't physically have anything to do with the managing of Minnie's", (GJ transcript, June 16, 1980, p. 104), when in fact he was or had been employed in a managerial capacity at Minnie's Lounge, Camden.

SPECIFICATION NOS. 34-38

In that on or about June 25, 1980, while testifying under oath before the Camden Grand Jury, [petitioner] did knowingly make false statements as follows:

- (34) in that he testified "(i)f I was put in there (in Minnie's Lounge) as an operative for the FBI, which I was—". (GJ transcript, June 25, 1980, p. 87) when in fact he was never placed in or assigned to Minnie's Lounge as an operative for the FBI or other federal law enforcement agency;
- (35) in that he testified that Don Manno, Federal Strike Force Attorney, authorized, directed or told him "to make [sic] an active part in the undercover investigation of Minnie's, (and) it was agreed that two employees would be put in there; that I wouldn't collect any money, but that I would have some say over the operation of them and those two employees", (GJ transcript, June 25, 1980, p. 8) when in fact Mr. Manno did not authorize any such undercover operations at Minnie's Lounge;
- (36) in that he testified that at Don Manno's discretion he removed Rose Rocco as manager of Minnie's and placed two female agents in Minnie's, (GJ transcript, June 25, 1980, pp. 88-89) when in fact Don Manno never told or directed him to place operatives in Minnie's Lounge;
- (37) in that in response to the question "(d)id you ever observe any barmaid or dancers using controlled dangerous substances?" he answered, "(n)o, I did not", (GJ transcript, June 25, 1980, p. 131), when in fact he had observed Minnie's dancers and/or barmaids use controlled dangerous substances and/or had personal knowledge that they used controlled dangerous substances, in particular, marijuana;
- (38) in response to the question "(d)id you yourself ever take any controlled dangerous substances that were illegal?", he answered "(n)o, I did not", (GJ transcript, June 25, 1980, p. 131), when he had in fact used the illegal controlled dangerous substances marijuana and/or quaaludes and/or methamphetamine.

CONTROLLING RULES AND REGULATIONS

N.J.A.C. 4:1-16.9(a) provides that employees in Civil Service may be removed for the following causes: neglect of duty, insubordination or serious breach of discipline, disorderly or immoral conduct and conduct unbecoming an employee in public service.

The Camden City Police Officers' Manual, Chapters 2 and 11, set forth general rules of conduct and a disciplinary code. Rule 1.2.104 provides that officers shall devote their whole time to the service of the department and that they are prohibited in engaging in any other business or occupation except security and police details such as building and loan protection, dances and receptions, in which case they are first to obtain permission to do so from the chief of police. Rule 1.2.127 provides that an officer in uniform shall not enter any premises where intoxicating beverages are sold or stored except in the immediate performance of police duty. Rule 1.2.131 provides that an officer shall not use any narcotic, hallucinating, stimulating or dangerous drug while on or off duty unless prescribed by a physician for illness. Rule 1.2.149 requires that all officers shall be honest and truthful at all times and that a polite declination to comment shall be used in those cases where members should not divulge confidential or critical information. Rule 1.2.208 provides that no officer or employee of the Department own, operate or be employed in any manner by or in a liquor establishment. This prohibition is similar to ABC Regulation 20, Rule 30, which states:

No license shall be held by any regular police officer, any peace officer or any other person whose powers or duties include the enforcement of ABC laws or regulations, or by any profit, corporation or association in which any such officer or person is interested directly or indirectly, nor shall any licensee employer have connected with him in any business capacity whatsoever any such officer or person.

Rule 1.11.118 states a policy that repeated violations of departmental rules and regulations and any other course of conduct will be evidence that the officer has little or no regard for his responsibilities as a member of the police department. Rule 1.11.119 prohibits any conduct unbecoming an officer and a gentleman. Rule 1.11.120 prohibits all conduct subversive of good order and discipline. Rule 1.11.132 requires that all officers must comply with the orders, directives and regulations, whether oral or written, issued by chief of police, as well as those issued by superiors and supervisors. Rule 1.11.140 requires that an officer shall take appropriate action concerning illegal activity, including vice conditions and make a written report of the same to his commanding officer. Rule 1.11.141 requires that officers not be negligent in the performance of their duty. Rule 1.11.162 prohibits the communicating or imparting of confidential police information, either in writing or verbally, to unauthorized persons. Rule 1.11.168 prohibits officers from engaging in any unauthorized remunerative occupation. General Order 79-1 issued by the Camden City Chief of Police sets out the purpose, policy and procedure for obtaining permission from the Chief for an officer to engage in outside employment.

Since the respondent had not only the burden of going forward with the evidence in this case, and the burden of proof, because this was a disciplinary action against an employee covered under the New Jersey Civil Service system, the following specifications were dismissed at the end of the respondent's case because there was a lack of evidence to establish a prima facie case as to these specifications against the petitioner: specification nos. 1, 2, 5, 16, 21, 22, 23, 30, 31, 34, 35, and 36.

DISCUSSION

The petitioner was first employed as a patrolman with the respondent on August 25, 1969. He graduated first in his class from the Police Academy and served over a year as a mobile patrol officer. In April 1971, he was assigned to the Detective Division; he was eventually assigned to the Homicide Unit, and on March 30, 1972, he was promoted to Detective. On February 15, 1974, the petitioner was promoted to Sergeant. During the early part of 1977, he acted as Night Commander of the Detective Division on the 4:00 p.m. to 12:00 a.m. shift. In July 1977, the petitioner was assigned to the Patrol Division where he served as an Acting Watch Commander. In August 1979, the petitioner was assigned to the Safe Streets Unit for the 4:00 p.m. to 12:00 a.m. shift. During the course of his career, the petitioner has conducted investigations involving homicides, rapes, armed robberies and other violent crimes. He has also participated in numerous undercover assignments and he has received citations from local State and Federal authorities for the roles which he has played in these assignments.

The petitioner has also been active in the Superior Officers' Association, a collective bargaining agent for superior officers, sergeants and those officers above in rank, within the Camden City Police Department. On January 1, 1978, the petitioner was elected vice president of this association. Early in 1980, the association voted to demand the resignation of the Mayor of the City of Camden and the petitioner, as president, leveled charges of corruption within the city, including charges of extortion on the part of another police officer, named Kafitz, who is the president of another collective bargaining unit within the police department. On February 13, 1980, a Grand Jury was convened to investigate the charges leveled by the petitioner. The Grand Jury heard testimony from February 21, 1980 through July 10, 1980. At the end of its inquiry, the Grand Jury returned no true bills of indictment, but recommended that copies of the transcripts of testimony be forwarded to the Camden City Police Chief and Director of Public Safety for appropriate administrative action.

Prior to discussing the actual charges and specifications against the respondent, it is appropriate to point out that the petitioner questioned the validity of this proceeding, arguing that he had been denied a hearing before the chief of police as required in department regulations and appropriate collective bargaining agreements, and that he had not been provided a departmental hearing within 30 days as required in N.J.A.C. 4:1-50.15. As to the latter claim by the petitioner, a written decision was issued by the undersigned wherein it was held that the 30-day requirements of N.J.A.C. 4:1-5.15 did not preclude the de novo hearing conducted under the Rules of the Civil Service Commission and the Office of Administrative Law. General Order 74-1 of the Camden City Police Department does provide that the chief of police will conduct hearings on disciplinary charges. However, the respondent cites Rosko v. Pagano, 466 F. Supp. 1363 (D.N.J. 1979) as authority for appointing an independent hearing examiner to remove any possibility of prejudice against the petitioner. Although the undersigned is not in agreement with the respondent's interpretation of the Rosko case and with the respondent's position that the Chief should not have conducted the hearing below, no error was committed in appointing an independent hearing examiner since the petitioner was given a full hearing, de novo, in the proceeding before me. In other words, even if the respondent has violated its own general order and its collective bargaining agreement, the petitioner's remedy is elsewhere and not before the Office of Administrative Law.

Taking the charges somewhat out of order, let us examine the evidence presented by both sides as to the actual facts surrounding each specification. As to specification no. 9, the petitioner is charged with knowing that a female child was served an intoxicating beverage at Minnie's Lounge and with failing to take appropriate action. The respondent presented evidence to support this charge in the testimony of Carla Moore. Miss Moore testified that she took her niece, who is ten years old, into Minnie's Lounge where the child became ill after drinking what Miss Moore believed to be an intoxicating beverage. There was no testimony that the petitioner was present at the time the child was alleged to have been served this drink. There was evidence from a tape-recording of a conversation from Miss Moore with the petitioner concerning the incident. This conversation did indicate that the petitioner did question Miss Moore about the event, and it was in his testimony on the stand that he could not confirm Miss Moore's allegation; that he came to the conclusion that the incident had not occurred and that Miss Moore may have been attempting to obtain some consideration for herself or her niece. After hearing the testimony of both witnesses and listening to the tape, it is concluded that the incident either did not take place or, if it did, that there is a

possibility that alcoholic beverages were not served to the minor in question. Further, the petitioner was not present when the incident occurred and the information he obtained would support his decision to take no further action as a police officer.

In specification nos. 3, 7 and 28, the petitioner is charged with being employed by and/or assisting in the management of and/or managed for compensation or other benefit a dance agency known as and doing business as Dancers Unlimited without properly requesting approval and receiving approval from the chief of police, pursuant to General Order 79-1, and testifying falsely before the Grand Jury on June 16, 1980, to the question, "You are the real owner of Dancers No. One and was [sic] a partner or involved in running Dancers Unlimited. . .is that true?". The petitioner answered, "I gave people assistance such as driving, advice, etc. but not in the employ, own, share a profit in, take money from, no," when, in fact, he did run, did help run and did share a profit or receive money from both agencies.

There are two dance agencies which existed and are of concern in this matter, as to the charges against the petitioner. First there was a dance agency known as Dancers Unlimited, which was in operation from about 1974 through the early part of 1978. In early 1978, there came into existence a dance agency known as Dancers No. One. There seems to be no dispute that at least 50 percent of Dancers Unlimited was managed by Sandra Ripple Eve. The respondent did offer some testimony from various dancers that the petitioner was involved in the management of Dancers Unlimited. These dancers, however, were not involved with this agency at its inception and became employed for Dancers Unlimited during the mid-1970's. The petitioner testified and established that during this period of time, he and Miss Eve established a domestic situation together and that he was frequently in her company even while she was managing this dance agency. They shared the same residence and it would not be unreasonable for people to assume that the petitioner had something to do with the dance agency because of his close association with Miss Eve. In other words, there is not sufficient evidence to make a finding that the petitioner managed, or assisted in managing for compensation or any other benefit, Dancers Unlimited.

As to specification nos. 4, 25, 26, 27 and 28, the petitioner is charged with managing or assisting in the management for compensation or other benefit a dance agency known as or doing business as Dancers No. One without requesting and receiving approval from the chief of police and testifying falsely before the Grand Jury on June 16,

1980, in response to the question, "Did you at any time try to solicit Patty Phillips Hoyers to start this business (a dancer's agency) and run it for you?" The petitioner answered, "On her own or run it for me, no." In fact, however, he did solicit Miss Hoyer to run a dance agency and she did, in fact, run an agency with and/or for him. In response to the question, "Did you ever try to solicit Patty Hoyer to do this work for you and start up this business (a dance agency) through her husband (Michael Hoyer, a police officer)?" The petitioner answered, "No." He did, in fact, solicit Patty Hoyer's assistance through her husband Michael Hoyer. In response to the question, "You are the real owner of the Dancers No. One, and was [sic] a partner or involved in running Dancers Unlimited. Is that true?" The petitioner answered, "I gave people assistance such as driving, advice, etc. but not in the employ, own, share a profit in, take money, no." In fact, however, he did run, help run, and share a profit or receive money from both agencies. As to these charges, the evidence is more clear. Patty Hoyer testified that in early 1978, the petitioner approached her and sought her help in setting up what became the dance agency known as Dancers No. One. Patrolman Hoyer, Patty's husband, testified that the petitioner spoke to him in an effort to seek his help in getting his wife to help set up this dance agency. Several dancers, who actually worked for Dancers No. One, testified that the petitioner was actually involved in the running, managing and daily operations of this dance agency. They included Laurie Dankle, Jacquelyn Roper and Carla Moore. Their testimony was supported by Aeche Stanishevski, a barmaid who worked at Minnie's Lounge. The testimony of the dancers was also supported by statements given at the hearing below by Frances Zipeta, Barbara Ann Delaney and Debra Delaney.

The petitioner, in defending himself against these specifications, called several dancers who testified to support the petitioner's contention that he was not involved with Dancers No. One, other than the fact that he was living with Rose Marie Rocco, who he claimed to be the owner of Dancers No. One and that he was married to Sharon D'Auria, also involved in the management of Dancers No. One. These dancers included Christine Green, Kathleen Wiley and Diane Ricci. However, the petitioner had to rely mostly on the testimony of Rose Marie Rocco, the individual that he claimed was the actual owner and manager of Dancers No. One. Miss Rocco's testimony was not convincing and it was very difficult to believe that she could have ran a dance agency without considerable help which obviously came from the petitioner. I do not question the petitioner's statement that he received no actual monetary benefit from Dancers No. One,

but his girlfriend, Rose Marie Rocco, did and so did his wife, from whom he was separated. The petitioner admitted that he had to pay less support to his wife when she was able to make money on her own.

In specification nos. 6, 8, 18, 19, 20, 24, 29, 32, and 33, the petitioner is charged with managing or assisting in the management and/or was employed for compensation or other material benefit at Minnie's Lounge, an establishment serving alcoholic beverages in the City of Camden and with testifying falsely before the United States District Court on March 28, 1980, in the matter of State of New Jersey v. Feketi, by answering, "No, I have not" to the question, "Are you or have you ever been the manager of Minnie's Lounge?", by answering, "No" to the question, "Do you know have or have you ever had an interest in Minnie's Lounge?", by answering, "No, I have not" to the question, "Were you ever the manager of Minnie's Tavern?" and, by answering, "No, Sir" to the question, "Did you ever receive any money directly or indirectly from Minnie's Tavern?" and testifying falsely before the Grand Jury on June 16, 1980, by answering, "Did I ever arrange work schedules for barmaids - no," when, he had, in fact, arranged work schedules and when he answered, "What I am saying, I didn't physically have anything to do with the managing of Minnie's," when, in fact, he was or had been employed in a managerial capacity at Minnie's Lounge. It is also being charged that the respondent never sought the permission of the Chief to be a manager at Minnie's Lounge. The failure to obtain this permission from the Chief was never disputed by the petitioner for the position at Minnie's as well as for the running of Dancers No. One. As to these specifications, the respondent presented testimony of witnesses who testified observing the petitioner performing managerial activities at Minnie's Lounge. This testimony came from Patty Hoyer, Laurie Dankle, Jacquelyn Roper, Aeche Stanishewski and Carla Moore. Again, this direct testimony was supported by statements made by Frances Zipeta, Barbara Delaney, Debra Delaney and Ronald Poore at the departmental hearing below.

The petitioner, in defense of these specifications, argued that the statements made below by the last four persons should not be considered because he did not have counsel available to him at the departmental hearing. These statements, however, were given under oath and the petitioner did have an opportunity to ask these witnesses questions when they testified. Therefore, their testimony was sworn and the petitioner had an opportunity of cross-examination. I feel this is sufficient to make these statements admissible before me. In addition, these statements are supported by the direct testimony of the witnesses who did testify. The petitioner also called Edmund and

John Aristone, the owners of Minnie's Lounge, who testified that even though they offered the position of manager to the petitioner, he turned it down because he was a policeman and that he recommended Miss Rocco for the position. It was the position of the Aristones that Rose Rocco was the manager of Minnie's Lounge and not the petitioner; however, they did both testify that during the hours when Miss Rocco was supposed to be the manager, they were not present at the establishment. Again, the petitioner had to rely heavily upon the testimony of Miss Rocco. Again, her testimony was very weak and could not offset the volume of evidence presented by the respondent to support the position that the petitioner was the manager of Minnie's Lounge. The petitioner also admitted in his own testimony that he did try to create the impression that he was the manager of Minnie's Lounge and the manager of a dance agency, at times, so that he could pursue his undercover operations. None of this, of course, had been approved by any of his superiors nor did he make this information available to any of his superiors. There is no evidence, however, that the petitioner received any direct compensation from the Aristones for the duties he performed at Minnie's Lounge. One would describe it as a front operation where Miss Rocco was listed as the manager and did perform some duties and was moderately paid and the petitioner provided with help and assistance and performed some of the managerial tasks.

As to specification nos. 10 through 15, 37 and 38 concerning the use and knowledge of controlled dangerous substances, the respondent presented witnesses which contended that the petitioner was aware of the use of marijuana in Minnie's Lounge, that the petitioner purchased and used marijuana at Minnie's Lounge and his apartment in Pennsauken, that the petitioner used methamphetamine in his apartment, that the petitioner gave one quaalude to Jackie Roper in his apartment and that the petitioner purchased marijuana in Florida. The petitioner presented evidence through his own testimony and those of other witnesses denying the use or distribution of any controlled dangerous substance. As to the use of marijuana in Minnie's Lounge, all the testimony indicated that this activity went on in the women's room and there was no evidence that the petitioner was ever present when marijuana was smoked at Minnie's Lounge. He was no more aware of the use of marijuana at Minnie's Lounge as would be the many other officers who seem to frequent this establishment. As to these specifications, I found the petitioner's testimony credible and I believed his witnesses over those witnesses presented by the respondent. The single incident described by Miss Roper occurred at a time when she admitted that she was involved in the heavy use of controlled dangerous substances. It is my feeling that as to one single incident, her ability to recollect may have been

affected by that use. The pill could have easily been supplied by Miss Rocco, who was also using the substances.

As to specification no. 17, where it is alleged that the petitioner tried to alter the testimony of a witness before the United State District Court, the only evidence presented by the respondent was that of the testimony of Fran Zipeta given at the departmental hearing below. The petitioner completely denied this testimony. Having the opportunity to observe the petitioner on the stand, even though I do not accept completely all of this testimony concerning all of the specifications, I do find his testimony credible, as to this specification, and I come to the conclusion that there is a lack of evidence to make a finding that the petitioner tried to tamper with the testimony of this witness before the United States District Court.

FINDINGS

Based upon the evidence before me, I **FIND** that from the early part of 1978 through the beginning of 1980, the petitioner did manage or assist in the management of for benefit a dance agency known as and doing business as Dancers No. One. The petitioner did this without properly requesting and receiving approval from the Chief of the Camden City Police Department. From December 1978 to about the end of 1980, the petitioner did manage or assist in managing for benefit Minnie's Lounge, an establishment serving alcoholic beverages located in the City of Camden. This was done by the petitioner without properly requesting and receiving approval from the Chief of Police. On or about March 28, 1980, while testifying under oath in the matter of State of New Jersey v. Fekete, United States District Court, for the District of New Jersey at Camden, the petitioner did testify that he never acted as the manager of Minnie's. On or about June 16, 1980, the petitioner, while testifying before the Camden County Grand Jury, did deny soliciting the help of Patricia and Michael Hoyer to set up a dance agency; that he had anything to do with a dancer's agency; that he was an owner of Dancers No. One, and that he ever was the manager of Minnie's Lounge.

CONCLUSION

I **CONCLUDE** that the petitioner has violated the provisions of N.J.A.C. 4:1-16.9(a) and rules and general orders of the Camden City Police department. We have now reached, what to me has been the most difficult problem in this case. As stated

earlier in this opinion, the petitioner had been a police officer for approximately 11 years prior to his removal and had established an outstanding record in this position. The petitioner had and continues to have the respect of the other officers in the Camden City Police department, which is demonstrated by the fact that he is still the president of the Superior Officers' Association. It cannot be denied that by the petitioner being involved in the dance agency and in Minnie's Lounge, he was able to use this as a means of learning of illegal activities in the City of Camden. There is no evidence that the petitioner received a lot of money for being involved in the dance agency or in Minnie's Lounge. And, there is no question that the petitioner even believes today that his connection with the dance agency and Minnie's Lounge was in any way in violation of the New Jersey Administrative Code, ABC regulations, or the rules and orders of the Camden City Police department. I was also impressed by the testimony of the former chief of the Camden City Police department when he testified that he felt that there was no reason why he should not have been allowed to hold the departmental hearing concerning this matter. He gave the impression that if he had held the hearing or if he had been allowed to handle the charges against the petitioner, the petitioner would have been reprimanded and told to disassociate himself with any of the activities of the dance agency and Minnie's Lounge and that the petitioner would have been suspended from duty until he had done so. I recognize that the charges involving the petitioner's testimony in the United States District Court and before the Grand Jury raise a question of perjury, but that involves a question of criminal intent which I feel that the petitioner does not have. How easily the petitioner could have been removed if he had been convicted of a criminal offense before a court having criminal jurisdiction.

There are also other facts which came out during the course of the hearing which should be considered. The petitioner was president of the Superior Officers' Association and involved with negotiations with the City of Camden. The petitioner had made charges against the Mayor and against the president of the other union within the Camden City Police Department. There was testimony that the Mayor had ordered that the petitioner's activities be scrutinized in an effort to discredit the petitioner. The Grand Jury that was convened was to look into charges against the City administration, and it is interesting to note that the former Mayor of Camden has had his difficulties with the Federal Criminal Courts and that the president of the other union within the police department was on an extended leave of absence during the hearings of this matter. The petitioner believed when he was testifying before the Grand Jury that the Grand Jury was investigating other officials and that most of the evidence which was eventually used

against the petitioner was actually provided by him in trying to substantiate his charges against the Mayor and other police officers.

In light of all of this, one must do what he feels that his conscience has dictated as being fair. Therefore, it is **ORDERED** that the petitioner shall be suspended from his position as a Sergeant with the Camden City Police Department for six months, effective October 22, 1980. The petitioner shall be reinstated in his position on February 21, 1983. This will allow sufficient time for the Civil Service Commission to act on this order. I specifically award no back pay to the petitioner because I have found that he violated the New Jersey Administrative Code and the rules and orders of the Camden City Police Department. Further, much of the delay from the time of the petitioner's removal on October 22, 1980, until the present was caused by the petitioner and/or his legal representative.

I recognize that there are those who will disagree with my decision that the petitioner should be reinstated in his position. There have been, however, other law enforcement officers who have committed more serious acts of misconduct and who have not been removed from their positions, while other officers have been removed for less serious offenses. In this case, the petitioner will be suspended for six months and lose over 16 months pay which I feel is a sufficient penalty for the violations that he committed.

This recommended decision may be affirmed, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Civil Service Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby FILE my Initial Decision with the CIVIL SERVICE COMMISSION for consideration.

Dec 23, 1982
DATE

Robert W. Scott
ROBERT W. SCOTT, ALJ

Dec. 27, 1982
DATE

Receipt Acknowledged:
Peter J. Calderone
Peter J. Calderone
Director of Administrative Practices
and ~~CIVIL SERVICE COMMISSION~~

JAN 4 1983
DATE

Mailed to Parties:

Spitak & Ryznar Co.
OFFICE OF ADMINISTRATIVE LAW

plb

Rose Marie Rocco, Former Manager, Minnie's Lounge
Edmund Aristone, Owner of Minnie's Lounge
Vincent P. Brunick, Patrolman, Camden Police Department
Howard Caldwell, Camden Police Department
Harold Milleky, Chief, Camden Police Department
Valorie Petrilla, Oasis Lounge
Mark R. D'Auria, petitioner's son
Gene Latoree, self-employed, Audubon, New Jersey
John Aristone, Merchantine, Secretary-Treasurer, Minnie's Lounge
Richard A. D'Auria, petitioner

WITNESSES:

Michael Hoyer, Patrolman, Camden Police Department
Rose P. Hoyer, wife of Patrolman Hoyer
Joann Callahan, Court Reporter
Jack J. Zappacosta, Deputy Attorney General
Karen Rosman, Camden County Prosecutor's Office
Laurie Dankle, Riveria Lounge, Pennsauken
Jacquelyn Roper, former dancer
Aeche Stanishewski, Harlem Oasis Lounge
Mark Grandsen, Sergeant, Camden Police Department
Richard Arensberg, Detective, Camden Police Department
Albert Handy, Sergeant, Camden Police Department
Ronald Miller, Patrolman, Camden Police Department
Carla Moore, Fantancy Dance Agency
Edwin J. Figueroa, Camden Police Department
Edward Schaeffer, Camden Police Department
Ronald Baker, former patrolman, Camden Police Department
Dennis Keegan, Sergeant, Camden Police Department
Christine Green, Harlem Agency
James M. Anderson, Sergeant, Camden Police Department
George Emore, Lieutenant, Camden Police Department
William R. Campbell, Captain, retired
William Murroe, Sergeant, Camden Police Department
Kathleen Wiley, Micilor Corporation
Jack W. Yeager, attorney
Frank Matreale, Camden Police Department
Armond Paglione, Detective, Camden Police Department
Donald McGlensey, Captain, Camden Police Department
Sharon D'Auria
David P. Daniels, Lieutenant, Camden Police Department
Thomas W. Krolicky, U.S. Treasury Board of AB & TF
Diane Ritchie, dancer
John Sarbella, Sergeant, Camden Police Department
Andrew Long, self-employed, Creative Customs
Timothy McCarthy, PATCO Police Department