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ATTORNEYS FOR PLAINTIFF

RECEIVED
MAR 17 2006
ATLANTIC COUNTY
LABOR...

CHRISTOPHER MOZITIS,
Plaintiff,

v.

JOHN COYLE, MATTHEW COYLE,
JOHN POPE, RAY THERIAULT,
EGG HARBOR TOWNSHIP,
AND JOHN DOES 1 THROUGH
25, INCLUSIVE, FICTITIOUS NAMED
DEFENDANT, jointly, severally, and in
the alternative,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ATLANTIC
COUNTY

DOCKET NO. *ATL-1936-06*

Civil Action

CLERK OF SUPERIOR COURT
ATLANTIC COUNTY
06 MAR 17 PM 4:07
CIVIL DIVISION - FILED

COMPLAINT, DEMAND FOR JURY
TRIAL, AND DESIGNATION OF
TRIAL COUNSEL

Plaintiff Christopher Mozitis, a Police Officer employed by Egg Harbor Township and residing in Egg Harbor Township, by way of Complaint against defendants, says:

FIRST COUNT

1. At all relevant times herein, defendant Egg Harbor Township was a legal entity created and existing pursuant to law located in Atlantic County, New Jersey, which was the employer, through its police department, of the plaintiff, and of the defendants, John Coyle, its Chief, the defendant Matthew Coyle, his brother, who is a Captain of Police in charge of the Detective Bureau, defendant John Pope who is the Captain in charge of patrol, and Ray Theriault, Shop Steward, all of whom have offices located at 3515 Bargaintown Road, Egg Harbor Township, Atlantic County, New Jersey and all of whom acted both within the scope

and course of their employment with the defendant Egg Harbor Township and for their own personal ends to effectuate the retaliatory hostile work environment described herein.

2. At all relevant times herein, defendants John Does 1 through 25, inclusive, are fictitious names for employees of Egg Harbor Township or of the Egg Harbor Township Police Department who aided and abetted the course, scheme, or plan of retaliation and civil rights violations as set forth herein, or who authorized, ratified, condoned, or acquiesced in same, or who were responsible for the proper training, supervision, monitoring, and other aspects of work place compliance with the public policy of the State of New Jersey precluding retaliation for protected conduct, or who aided and abetted their co-conspirators, or who conspired with the named defendants to effectuate the wrongs referred to herein.

3. Plaintiff has been a police officer with Egg Harbor Township since 1999; following his initial swearing in, plaintiff has engaged in a variety of acts of protected conduct within the meaning of the Conscientious Employees Protection Act, N.J.S.A. 34:19-2, et seq.

4. The protected conduct plaintiff has engaged in involves complaints of illegal, unlawful, or unethical conduct by and involving various personnel at the Egg Harbor Township Police Department, which has resulted in an ongoing, retaliatory, hostile work environment in violation of CEPA as recognized by the Appellate Division in the case of Nardello v. Township of Voorhees, 377 N.J. Super. 428 (App. Div. 2005).

5. On or about July 12, 2005, plaintiff took a written promotional test for purposes of becoming a sergeant with Egg Harbor Township.

6. Following the written test on July 12, 2005, plaintiff underwent an oral examination on July 13, 2005.

7. On July 19, 2005, the written test scores and oral evaluation scores came out, as well as final rankings, at which time plaintiff learned that five individuals who had attended a promotional school different from that plaintiff had attended had come out in the top five positions, which was shocking to plaintiff and to others, since it was well known that these five individuals were definitely not the "best and the brightest".

8. Just before the written test was administered, plaintiff had heard rumors that some police officers, who were ultimately among the five top ranked candidates, had been boasting that they had been given access to a surreptitiously made audiotape recording of the sergeant's promotional exam oral test portions by the Keys School.

9. Upon learning that those individuals who had attended that school, Keys, a school located in North Jersey, plaintiff brought his complaint to the attention of the Captain of Patrol, Pope, pointing out that if it was true that such a tape had been made available, the individuals involved engaged in conduct that violated a number of the rules and regulations of the police department and the rules and regulations of the Department of Personnel of the State of New Jersey, as well as other sources of law.

10. Plaintiff has learned that the official test, established by the New Jersey Chief of Police Association, has never been the subject of an authorized tape recording, such that the tape recording utilized by a number of the higher ranked candidates was made in violation of law.

11. The use of the surreptitiously made audiotape for purposes of obtaining an advantage in a test constitutes deceitful and dishonest conduct, which is clearly contrary to the rules and regulations applicable to such officers.

12. On July 26, 2005, and August 1, 2005, plaintiff reported verbally and in writing to his Chief of Police, defendant Coyle, and to plaintiff's Patrol Commander, defendant Pope, plaintiff's belief that there was unlawful test cheating on the subject examination, thereby engaging in protected conduct.

13. As a result of plaintiff's complaint, an Internal Affairs investigation bearing IA Number 5-22 was initiated on or before August 2, 2005, yet, before it was completed, and before plaintiff was even interviewed by the investigator, the Egg Harbor Township Committee, the members of which are among the John Doe defendants and the defendant Coyle, Chief of Police, had all approved a promotion list that they knew to be potentially tainted, such that an officer was promoted from that list to sergeant on August 10, 2005, two full weeks before the Internal Affairs investigation, which was half-hearted at best, was completed.

14. The defendant Coyle, Chief of Police, publicly stated to The Current, a local newspaper, that the promoted officer had scored the highest on the promotion exam for sergeants, failing entirely to disclose the fact that that high score was apparently obtained by cheating.

15. Plaintiff, on information and belief, asserts that after written test and oral test scores were collected and the officers ranked, the police officers were then evaluated by the defendant Coyle, Chief of Police, by certain Captains, as well as by other superior officers, who then manipulated the ultimate promotional list rankings based upon non-objective factors other than testing.

16. The process used by Egg Harbor Township to evaluate the candidates was completely subjective and was both arbitrary and capricious, having been utilized to interject

a personal preference into a purportedly unbiased testing process, such that favoritism was allowed to “trump” merit.

17. Plaintiff’s personal evaluation by the Chief was scored both arbitrarily and capriciously, failing entirely to accurately reflect previous performance evaluations, actual behavior, and based upon bogus justifications for falsely low scores in three categories, pertaining to “creating an optimistic and positive atmosphere”, “spurring subordinates through example”, and “training/service skills”, since the low scores plaintiff received in these categories were inconsistent with other parts of the same evaluation, and were based upon factors completely beyond plaintiff’s control, such as the Department’s failure to give approval for plaintiff’s multiple requests to attend schools for training service.

18. Plaintiff had filed an initial grievance seeking to obtain relief, and when that was rejected, went to a Step 2 grievance through submitting the memo annexed hereto as Exhibit “A” to the defendant Coyle in Coyle’s capacity as Chief of Police; the allegations of Exhibit “A” are expressly incorporated herein.

19. Plaintiff’s complaints and grievances were simply ignored, based upon a biased Internal Affairs investigation deliberately designed to cover up misconduct, such that plaintiff has exhausted his administrative remedies, such that being forced to resort to them would be an exercise in futility.

20. In retaliation for plaintiff’s protected conduct in objecting to the misconduct relating to the examination, plaintiff has been subjected to a grotesquely hostile and retaliatory work environment, such that he has been transferred to another squad, his days off have been changed, his requested transfers have been arbitrarily denied, and plaintiff has been subjected to threats of assault, such as that by defendant Ray Theriault, who threatened to

“kick” plaintiff’s “ass” when plaintiff pointed out that Theriault, a shop steward, was violating his duty to the plaintiff by failing to pursue the grievance zealously and by publicly criticizing plaintiff’s complaint; plaintiff’s union has also sought to oust him as part of that retaliatory scheme.

21. Plaintiff has learned that Robert Gray was bragging about how the department had blocked the person who truly scored the highest from being ranked first in the ultimate rankings by “sandbagging” him on his chief’s evaluation; moreover, the absolute failure of the department to provide any justification for its low scores given to plaintiff supports plaintiff’s claim that the purported “chief’s evaluation” was nothing more than a pretext to reward those who are “in” with the administration.

22. Since the time of plaintiff’s protected conduct as referred to herein, plaintiff has been subjected to an ever increasing barrage of retaliatory acts, which have enhanced and exacerbated an already hostile work environment for the plaintiff.

23. Permitting plaintiff’s fellow test takers to cheat on the examination and to utilize the results of that cheating and the arbitrary and capricious “chief’s evaluation” process constitutes a violation of plaintiff’s rights under New Jersey Statutes and the New Jersey Constitution.

24. As a direct and proximate result of the foregoing, plaintiff’s rights under the Civil Rights Act of 2004, have been violated, and plaintiff has been damaged.

25. The conduct complained of was intentional, malicious, willful, wanton, and in reckless disregard of plaintiff’s rights and the damage caused to plaintiff, the department, and to the public’s confidence in the testing process, as a result of which plaintiff has been damaged.

WHEREFORE, plaintiff demands judgment against the defendants jointly, severally, and in the alternative for compensatory damages, punitive damages, interest, attorney's fees, costs of suit, an Order vacating all promotions procured through the use of dishonesty or cheating or arbitrary and capricious ranking processes, together with such other relief as is just and equitable.

SECOND COUNT

1. Plaintiff hereby incorporates paragraphs 1 through 25 as though set forth in full herein.

26. As a direct and proximate result of the defendants' deliberate violation of plaintiff's rights pursuant to the Conscientious Employees Protection Act, N.J.S.A. 34:19-2 et seq., plaintiff has been damaged.

WHEREFORE, plaintiff demands judgment against the defendants jointly, severally, and in the alternative for compensatory damages, punitive damages, interest, attorney's fees, costs of suit, an Order vacating all promotions procured through the use of dishonesty or cheating or arbitrary and capricious ranking processes, together with such other relief as is just and equitable.

VAN SYOC CHARTERED
Attorney for Plaintiff

BY: 

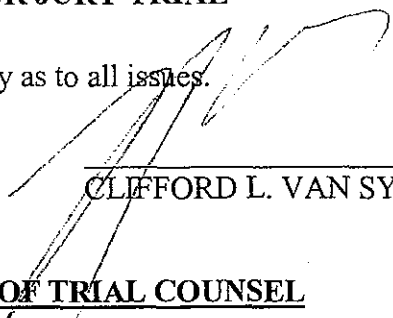
CLIFFORD L. VAN SYOC

Dated:

3-17-06

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury as to all issues.



CLIFFORD L. VAN SYOC

DESIGNATION OF TRIAL COUNSEL

Plaintiff hereby designates Clifford L. Van Syoc, Esquire as trial counsel in this matter.

BY: 

CLIFFORD L. VAN SYOC

CERTIFICATION

The undersigned counsel certifies that there are no other actions or arbitrations pending or contemplated involving the subject matter of this controversy at this time, and there are no additional known parties who should be joined to the present action at this. I certify the foregoing to be true. I am aware if the above is willfully false, I am subject to punishment.

BY: 

CLIFFORD L. VAN SYOC

DATED:

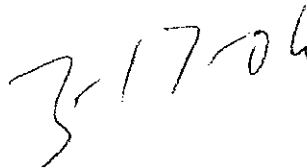


EXHIBIT "A"

Step Two Grievance

To: Chief John Coyle

From: Christopher Mozitis, Member of Mainland P.B.A. Local 77

Subject: Written Grievance related to Improper Conduct during
Sergeant's Promotional Test, IA Investigation and Performance Evaluations

Chief Coyle:

Pursuant to Article III, of the contract between the Township of Egg Harbor and the Mainland P.B.A. Local #77 (PBA), I formally present the following matter for your consideration under step two of the grievance procedure outlined under Article III. I further request your written response within ten days of the receipt of this grievance.

Relevant Facts

1. The Key's Promotional School audio-tape utilized by four EHTPD officers attending the Key's Promotional School was a secret recording of an official police department promotional test. The audio-tape's recording, distribution and use as a score enhancing tool was not authorized or sanctioned by the N.J. Chief's Association or EHTPD.

2. The Keys School audio-tape was obtained by a sworn police officer using *deceitful and dishonest means*. It was secretly recorded and distributed for dishonest use. The proof of its illicit value is evident by its continued use by the Keys Promotional School.

3. No one authorized an audio-tape recording of an official N.J. Chiefs's association oral test to be made. Neither the Chief's Association nor any police departments distributes such tapes for test preparation. N.J. Civil Service classifies the use of materials *not authorized* by the testing authority to be "cheating."

4. One dictionary defines cheating as: “To act dishonestly.” Four EHTPD officers acted dishonestly. Four EHTPD officers had *prior* knowledge that the Keys audio-tape was secretly recorded. They had *prior* knowledge the Keys School audio-tape contained verbatim oral test questions and verbatim oral test answers. School age children understand that having seen or heard the answers to a test, prior to taking it - *is dishonest and unethical*. Four EHTPD officers had this knowledge. After listening to the tape, they knew exactly what key phrases the Chief’s Association interviewers were looking for. Considering the amount of testable material to be tested on, this knowledge of key phrases (answers) *was invaluable* in regards to scoring advantage over fellow employees - *however minute!* Having access to verbatim questions and verbatim answers and using this knowledge for professional and pecuniary gain is unethical, unfair, deceitful and misconduct. In any academic setting, this would be deemed “academic cheating” and result in dismissal from the institution. As law enforcement officers, with monetary and professional gain at stake, it should also be considered cheating.

5. Cheating on a promotional exam is a matter of PUBLIC TRUST.

Reporting issues, or “whistle-blowing”, to higher authority affords me certain protection under the law. If the issue is not addressed internally, case law permits me to report public trust issues to an outside authority. I am afforded CEPA protection. Retaliation against me for reporting same is a violation of Federal Law.

6. The Key’s audio-tape has been unjustly compared to “word of mouth” representations that eventually make their way back to all professional training schools and subsequently used for test preparation. This is not an accurate representation. Unlike memory recall, which is not complete and rarely accurate, the Keys audio-tape contains verbatim, complete, official oral test questions and official oral test answers from a N.J. Chief’s association oral test – not recollections or estimates. Recordings are immensely valuable. It is for that reason that suspect confessions are required to be tape recorded rather than just hand-written. Exposure to the Key’s school’s secretly recorded audio-tape provided a distinct advantage to those who heard it. **The “law enforcement officer that provided the tape to the Key’s school went to**

extreme lengths to get it. This clearly indicates the seriousness of the breach of **Public Trust**.

7. The four EHTPD officers admitted full knowledge of the Key's tape's secret origin *before the test and after the test*. They also bragged about its contents. The resulting imbalance of opportunity and given unfair advantage is a violation of my civil rights.

6. In the interest of Public Trust, on July 26, 2005 and August 1, 2005 I reported verbally and in writing to the Chief of Police and Patrol Commander my suspicions of promotional test cheating. An Internal Affairs Investigation (IA #5-22) was initiated on or before August 2, 2005. Prior to completion of the IA #5-22 on August 24, 2005 and prior to my initial interview with the Captain of Criminal Investigation Division (the Chief's brother) the Township Committee and Chief of Police approved the tainted promotional list. Despite my allegations, despite an incomplete investigation, Officer Monroe was promoted off the list on August 10, 2005. The IA investigation would not even be completed for two more weeks on August 24th. The Chief made a public statement to *The Current* newspaper highlighting the fact that Officer Monroe had scored the highest on the Sergeant's promotional exam.

7. I charge that all tests takers were ranked by the administration upon the department's receipt of all written and oral test scores. After test scores were collected and officers ranked, police officers were then evaluated by the Chief, Captain Pope, Captain Coyle and other superior officers. Using this method, promotional list rankings were open to manipulation. Why were the evaluations not wholly completed prior to test results being returned to the EHTPD. Employee evaluations were supposed to be completed five days prior to the promotional tests.

8. The "Chief's Evaluation" process is highly subjective and arbitrary. Obviously, it also has capricious uses. The "Chief's evaluation" is used to inject personal preference into an otherwise unbiased testing process. It is the only aspect of the process that the administration has authorized control over. It's here that employee's

civil rights were violated. Some EHTPD officers received purposely inflated or purposely deflated evaluations so as to satisfy the administration's desire to create an optimal promotion list. Who would argue that personal favoritism does not come into play in the Chief's evaluation process. If not, in the interest of knowledge, please explain specifically how each numeric value is awarded. How does one earn a "six" as opposed to an "eight" or "10" in any one category. The scoring process is arbitrary. It is not based on objective measurable data. Coincidentally, there was approximately one week between the written/oral examinations and the compilation of the promotional list. Evaluations could have been completed while tests scores were unknown and unavailable. My Chief's evaluation was dated the day the promotional list was made public – *one week after the tests were taken and after written/oral test scores were received by the administration.*

9. My chief's evaluation was arbitrarily and capriciously scored. It does not accurately reflect previous performance evaluations and actual behavior. My immediate supervisor, the supervisor I work with everyday, told me twice recently that he did not know where they (those scoring the Chief's evaluation) came up with justifications for my low scores in three categories "create optimistic and positive atmosphere, spur subordinates through example and training/service schools." The low scores in these categories are not consistent with other parts of the Chief's evaluation. I believe these scores were assigned in an arbitrary and capricious manner. **These scores were assigned to punish and intentionally lower my position on the promotional list for past challenges of authority.**

I received a low score for "training/service" schools. It is widely known that I consistently volunteered for advancement and was consistently denied opportunity for schooling and training. For example, I was selected for the department's Motorcycle squad two years ago. I was repeatedly promised training for this position. Further, I received credit for this towards my Master Police Officer (MPO) application. Because of this, I did not apply for other job enhancement positions (bike patrol) because they are limited and are supposed to be spread around for everyone. The motorcycle position is an on-going joke. In fact, on September 2nd and 5th, two fellow officers asked me if I received a clothing allowance for the motorcycle position.

The fact that training/service schools and related experiences are factored so heavily in the promotional exam indicates there must be even manner in making them equally available to all employees – not just “loyal” employees.

In 2004, I applied for a traffic position. Lt. Catania told me the position was not for family people. This seemed contrary to what I was told by others, so I made an appointment the traffic sergeant. Sgt. Townsend told me that the position was *great* for family people – most of the guys had families. He explained there would be interviews for the position. A few days later, Officer Carmen was selected for the position. She was the most inexperienced and junior officer interested in the position. **Seniority was not considered.**

I have applied for Sound Meter School to legally address the many noise complaints we receive. While receiving many promises, I was never assigned to the school.

I requested Interview and Interrogation School. I was enrolled at the school during my second year of employment but, it was cancelled. Despite attempts to re-enroll, I was eventually e-mailed by Lt. Catania. In his e-mail, he explained that he decides who goes to school – not me. Ironically, Lt. Catania once threatened me by saying, “Remember, you have to come back and work for me.” This threat was made while I was on active duty - it was documented. Lt. Catania once told me he rewards loyalty when I asked him about training schools. He must consider me “disloyal.” Despite my reported progress as one of his subordinates, I have yet to progress into other positions. I lack training schools necessary for promotion. One has only to look at how many members of Squad 2 have left for other positions. **Despite years of disappointments and persistence, I was transferred to Squad 1 - after the career damage was done, after money and time was lost studying for the sergeant’s exam. I have to start all over.**

I have consistently requested FTO school. I have met with supervisors to discuss this request. Consistently, I have been denied. In one instance, then Sgt. Morris advised me that I was unapproachable. When asked to explain this, he replied, “You know how you sometimes wear your sunglasses in briefing...” During another meeting with Sgt.

Morris, I brought up the subject of becoming an FTO. I asked him why I was trusted to be OIC yet I could not get an FTO position. He replied, "*It's crazy isn't it?*" It was a demeaning and disrespectful answer to be given in front of my PBA Rep., two sergeants and my lieutenant. *Ironically, Sgt. Morris runs the FTO program.*

My performance evaluations reflect my desire to be an FTO. Other senior FTO's have told me in private that they have recommended me and don't understand why I'm not an FTO. It's quite amazing that after being shut out for so long that I have the desire to do anything above and beyond my job duties.

How can I not receive a top score in my Chief's evaluation for training/service schools after trying so hard to get training for advancement? As Chief, you are aware of this issue as you stated to me on August 1st, 2005 "We're trying to rectify the training issue." "We sent you to Traffic I and II in 2005." I was promised traffic school four years ago. If the issue is recognized, how can I be *penalized* for not having enough training and service schools? How is the evaluation score even determined in this process? The score is capricious and arbitrary.

Another incident involved me challenging an employee evaluation score. I was given a low employee evaluation score in an area of "employee contact" – it was justified by Sgt. Morris by saying, "You know how the guys go out after work, you're never there." (Of course, it was later denied.) Since when is drinking outside of work part of my employee evaluation?

In 2004, Sgt. Chambers wrote in my evaluation that I used more than the average number of sick days. I used 10 days. Ofc. Venuto used more days and it was not mentioned in his evaluation. When I brought this to Sgt. Morris' attention, he told me that Ofc. Venuto should not have told me that because it was private. Isn't the issue really one of fairness rather than one of privacy? Isn't it really about the fact that Ofc. Venuto used more sick days and it's not reflected in his employee evaluation? The evaluation was never changed.

I had to fight for my clothing allowance in 2003. I was denied a clothing allowance because *someone didn't want me to wear my police boots in the Iraq desert.* How unpatriotic.

That was almost as egregious as when the EHTPD cut my pay and health benefits just days after military activation for 9/11. My wife was 9 months pregnant. Thankfully, the NJ Attorney General's office came to my aid and got my pay and health benefits restored. When I did come back to work, my supervisors retaliated by placing me into patrol area #5. This is where new officers are typically placed. This was done to humiliate me. I had to complain to be put back where I was prior to being activated.

These aforementioned events have impacted my Chief's evaluation. The EHTPD work environment is very hostile to anyone who challenges decisions no matter how improper they may seem. Retribution is certain, and ultimately it is career suicide. For that reason, I am alone in this promotional exam challenge. Other officers have confided that they do not have the guts to make waves but agree with me. They are afraid of what will happen to them in two years when the next exam is held.

Prior Oral Discussions

On **July 26, 2005**, I sent a letter to you requesting to see my recent promotional test scores for the written, oral and Chief's evaluation. I requested an explanation as to how the Chief's evaluation is scored. My letter further reported my concerns that just a few days prior to taking the oral test, four fellow officers had listened to an audio-tape recording of an actual N.J. Chief's Association oral test interview. These allegations were presented in the context of a "whistleblower" action.

On **August 1, 2005**, I was requested to respond to the Chief's office to discuss my letter dated **July 26, 2005**. In the presence of Captain Pope and yourself, we discussed this letter in your conference room.

On **August 13, 2005** I visited Ofc. Romantino at the Atlantic City airport. Officer Romantino was one of the four officers that listened to the Key's tape. He told me that he did listen to the tape and that he was aware it was secretly recorded. He felt that it did help him to some degree on the oral test. I did not expect his candor but I respected his honesty. Perhaps his candor is the result of frustration felt by him towards the current administration.

On **August 15, 2005** I met with Captain Coyle to discuss my complaint that four officers cheated on the sergeant's promotional test. Officer Monroe had already been promoted to sergeant therefore I was unsure why I was even being interviewed. Capt. Coyle advised me that the Chief was very concerned about the integrity of the test. Capt. Coyle admitted the investigation wasn't complete. When I asked him if he was aware of the tape's contents, he replied "No." He admitted that all four officers admitted listening to the "old" tape. I asked Capt. Coyle to remedy the issue by throwing out the oral exam portion of the test. He replied that scores were so close that it wouldn't really have that much of an impact – **only a few people would be affected**. I responded, I'm one of those people! Capt. Coyle stated that they had to consider what was fair to them also.

I advised Capt. Coyle that I was upset that Lt. Morris attempted to influence or badger Detective Spano (he took the sergeant's test also). Lt. Morris had no involvement with IA #5-22. According to Det. Spano, Lt. Morris approached him and asked him if he approved of Officer Mozitis' actions. Detective Spano stated that he did. Lt. Morris was annoyed and told Det. Spano that he was disappointed in him. I believe this conversation was also witnessed by Det. Sgt. Davis and Capt. Coyle. Captain Coyle told me he did not hear the conversation. **Lt. Morris attended the Key school. (Strangely, a few days later, Capt. Pope apologized to Detective Spano on behalf of Lt. Morris.)**

We then discussed Ofc. Venuto's comments, Captain Coyle told me he interviewed Lt. Morris and Ofc. Venuto. He believes my statement was false or inaccurate because Ofc. Venuto denied telling me anything. Capt. Coyle went on to explain that the Chief, Capt. Pope and himself were involved with the Chief's evaluations and there was no misconduct.

On **August 17, 2005** I received a letter from Captain Pope ordering me not to discuss the on-going IA investigation #5-22. This letter was given to Lt. Kammer. He then called Sgt. Fair and PBA Shop Steward into his office. At that time, the letter was presented to me.

On the evening of **August 23rd, 2005** I e-mailed Capt. Coyle and asked how much longer the investigation would take since Officer Monroe was promoted weeks ago. He was moved to another squad and already enrolled in the West Point Leadership/Command academy.

On August 24th, Sgt Fair called me in to the station for a meeting with you. At that meeting, you advised me that you found **no ethical issues and all the training schools were bad and they corrupted the system. You told me the Key's Oral test audio-tape was old and didn't make much of a difference. Yet, no investigative authority had listened to it or even aquired a copy of it.** You then advised me that IA #5-22 was completed and would be forwarded to the Atlantic County Prosecutor's office.

The issue of the evaluation was discussed. **At this time, you told me the Chief's evaluation was worth "10" points and that they were your "10" points to do with what you want.** You then advised me that you completed the Chief's evaluations with the help of the Captains, Lieutenants and Sergeants. We discussed the letter from Capt. Pope and how it had something to do with my being kicked out of the airport. You also advised that Lt. Morris and Ofc. Venuto denied ever telling me about any score manipulation. In closing, you told me that you, not Captain Pope, made the decision to transfer me from Squad 2 to Squad 1 because I (Ofc. Mozitis) felt that I'd never get a fair break with Lt. Catania as my supervisor. I then told you that that was the first concrete explanation I had received regarding my transfer since it took place three weeks ago. I advised you that I would contact the NJ Attorney General's office regarding the outcome of the investigation. I believed the investigation was not properly administered. You advised me that the AG would simply send the investigation back to Atlantic County Prosecutor's office. (I took this statement to mean that you knew the investigation would stand as reported.) For that reason, I stated that I would request the AG's office send it somewhere else. There were too many conflicts of interest.

On August 26, 2005 I sent an e-mail to the NJ Chief's Association. My e-mail was personal. It was sent from my residence, used my home phone number and my private e-mail account. I never mentioned I was an township police officer. The e-mail was a request for information on the Chief's Association's testing procedures.

On August 30th, 2005 I received a written police department order from Captain Pope. Inside his order was a copy of my private August 26th e-mail to the Chief's Association. Captain Pope ordered me not to use my professional title in any correspondence. I e-mailed Capt. Pope back with a question clarifying his order. I also requested the name of the person that forwarded my private e-mail. As of September 7,

2005, I yet to receive a response from him. I have never received a copy of the IA #5-22 investigation results. As of this date, I have never been permitted to see my oral test despite my July 26th request to see it as is my right per General Order T-23.

Relevant Contract Provisions

Such action constitutes a violation of the contract between the Township of Egg Harbor and PBA Local 77. Specifically, such action constitutes a violation of agreement including but not limited to Article I, Article VIII, Article X, Article XXVII, XXXII, Article XXXVII.

Remedy Requested

As a member of the PBA, I respectfully request that the Township disqualify four candidates that attended Key Promotional School from the current promotional list. In the event that the Township does not want to take action against these four officers, the Township should vacate the current test and order a new test. I respectfully request that the Township contact NJ Attorney General's Office to request an immediate outside agency investigation into my allegations of promotional examination cheating and other promotional test irregularities. I respectfully request that the investigation include other Key school participants that may have benefited from use of the same tape. I respectfully request that the Chief's evaluation for myself (Officer Mozitis) be re-accomplished by my immediate supervisor. I request to see my oral test scores. I request that the issue of my past requests for training be reconsidered. I respectfully request to be returned to Squad II after the departure of Lt. Catania (to another position).

Egg Harbor Township PBA Member

Dated: _____

By: _____

Proof of Service

I hereby certify that I have served the original of this grievance to John Coyle , Chief of Police for the Township of Egg Harbor at his principal place of business on the _____ Day of September, 2005 at _____ o'clock in the P.M.

Egg Harbor Township PBA Member

Dated: _____

By: _____

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (hereinafter "this Agreement") entered into and by and among Christopher Mozitis (RELEASOR or Plaintiff), and John Coyle, Matthew Coyle, John Pope, John DeAngelis, Ray Theriault, Blaze Catania, Hector Tavarez, Mike Morris, William Fair, Theodore Kammer and Egg Harbor Twp. the (RELEASEES or Defendants), Releasees, collectively known as "the Parties."

Whereas, RELEASOR, as Plaintiff, filed a Complaint against Releasees in the Superior Court of New Jersey, Atlantic County, entitled "Christopher Mozitis, Plaintiff, V. John Coyle, Matthew Coyle, John Pope, Ray Theriault, Blaze Catania, John Deangelis, Hector Tavarez, Captain Mike Morris, Lt. William Fair, Captain Theodore Kammer, Egg Harbor Township, and John Does 1 Through 25, Inclusive, Fictitious Named Defendant, j/s/a, Defendants," bearing Docket No. ATL-L-1936-06, and has asserted claims against Releasees; and,

Whereas, the Parties wish to settle all controversies among them involving Plaintiff, including Plaintiff's claims bearing Docket No. ATL-L-1936-06, case No. 2008-6835 pursuant to Section 20 of the Workers Compensation Act N.J.S.A. 34:15-20, and any and all related claims which could have been asserted, whether they are presently known or unknown,

Whereas, Releasees deny each and every allegation made by Plaintiff, and enter into this agreement for reasons other than the merits of Plaintiff's claims; and,

Whereas, Plaintiff agrees that the merits of his claims against Releasees are disputed and have not been adjudicated by any Court;

Now, and for the consideration of the agreements, covenants, and conditions herein contained, the adequacy and sufficiency of which is expressly acknowledged by the Parties hereto, the Parties agree as follows:

1. OBLIGATIONS OF DEFENDANTS TO PLAINTIFF.

- a. After RELEASOR's execution and presentation of this Release and Stipulation of Dismissal with Prejudice, plaintiff shall be paid the total amount of Six-Hundred and Fifty Thousand dollars (\$650,000.00), which payment shall constitute consideration for the execution of this agreement and any other documents necessary to resolve and compromise this matter with finality and with prejudice, all payments due to plaintiff and his counsel, excluding the \$50,000.00 for the worker's compensation matter, no later than June 10, 2009;
- b. The settlement amount shall be paid to Releasor as follows:
 - i. Defendant Egg Harbor Township agrees to reinstate plaintiff

retroactive to March 12, 2008, and to pay him back pay in the form of one check to the order of Christopher Mozitis in the gross amount of \$90,573.04, which shall constitute the entirety of plaintiff's claims for back pay and from which shall be deducted all required, usual and customary deductions;

- ii. One check to the order of Van Syoc Chartered in the gross amount of \$200,000.00 which shall be in complete and full payment of any and all claims for counsel fees, costs and expenses in this matter, whether by Releasor or counsel for Releasor. Van Syoc Chartered's tax identification number is 22-3688383;
- iii. Regular, bi-weekly direct deposits to the order of Christopher Mozitis will begin being deposited in his checking account after he executes the Settlement Agreement and General Release. The regular, bi-weekly checks will represent the pay period which starts on April 28, 2009, and continue until December 31, 2009;
- iv. One check in the gross amount of Fifty Thousand dollars (\$50,000.00) to the order of Christopher Mozitis for full and complete settlement of case No. 2008-6835 via Section 20 of the Workers Compensation Act;
- v. One check to the order of Christopher Mozitis in the gross amount of Two-Hundred Fifty-Two Thousand dollars (\$252,292.32), to be allocated to claims for non-economic damages including pain, suffering, humiliation, embarrassment, loss of enjoyment of life, and disability, said settlement amount being fully and completely inclusive of all claims of any nature, sort, or variety. Said settlement check shall be made payable to "Christopher Mozitis." No part of this payment represents, or is intended to represent, payment for lost income or for punitive damages, it being the intention of the parties that this payment is solely to compensate the plaintiff for losses in the nature of personal injury. The parties stipulate to this allocation to make it clear that the payment is not intended to represent economic gain to plaintiff;
 - (1) Plaintiff understands and agrees that an IRS Form 1099 designating the amount specified in 1(b)(v) as "other income" may be issued. Plaintiff agrees to assume full liability for applicable state, federal and local taxes, if any, that may be required by law to be paid with respect to any such payment. Plaintiff further agrees that in the event that the Internal Revenue Service or any other taxing authority deems any tax, interest, penalties or other amounts to be due from the defendants with respect to this settlement, he will indemnify the defendants for any sums defendants may be required to pay exclusive of attorney's fees and costs.

- c. As to the Fifty-Thousand dollars (\$50,000.00) to be paid in the matter of 2008-6835, this payment shall not be made until a Section 20 settlement has been effected and approved by the Court of Workers Compensation;
- d. Immediately upon reinstatement to the active payroll, Defendant Egg Harbor Township shall place plaintiff on paid administrative leave, which shall terminate on plaintiff's completion of all steps needed to effectuate his retirement with 20 years of service. During this period, plaintiff shall remain subject to the rules and regulations of Egg Harbor Township and of the Egg Harbor Township Police Department. Plaintiff may seek employment while on paid administrative leave subject to permission of the Chief of Police of Defendant Egg Harbor Township, which shall not be unreasonably denied. While on paid administrative leave, plaintiff shall accumulate no vacation, sick, compensatory or other time. Plaintiff is entitled to all other fringe benefits, including salary, pension contributions, and family health-care coverage, should he elect to continue such coverage;
- e. Defendants' obligations to continue to employ the plaintiff shall cease upon the date he reaches 20 years of pension credits toward his retirement, believed to be December 31, 2009, after buying all available time from military or township committee service and after Egg Harbor Township pays all pension contributions resulting from plaintiff's reinstatement to the township's active payroll retroactive to March 12, 2008 and continuing until he obtains 20 years of pension credit.
- f. Defendant Egg Harbor Township shall hold in abeyance any and all unresolved disciplinary actions now pending against plaintiff as security for the compliance of plaintiff with the terms and conditions of this Settlement Agreement and Release and with the rules and regulations of the Defendant Egg Harbor Township and of the Egg Harbor Township Police Department. Upon receipt by Defendant Egg Harbor Township of a completed application by plaintiff for a pension based on 20 years of service with the Police and Fire Retirement System, all disciplinary charges which were sustained by Retired Judge Richard Williams shall be removed from the plaintiff's employee file, and those and all other pending charges shall be withdrawn and dismissed with prejudice such that plaintiff shall have a clean disciplinary record and his neutral job reference shall so state.

2. **OBLIGATIONS OF PLAINTIFF TO DEFENDANTS**

- a. No payment shall be released without an executed Release and Settlement Agreement and signed Stipulation of Dismissal with Prejudice for the matter bearing Docket No. ATL-L-1936-06;
- b. Plaintiff shall undertake any and all tasks necessary to resolve his workers compensation claim under docket number/claim petition 2008-6835 for the sum of \$50,000. Plaintiff shall be responsible for any counsel fees to his workers comp attorney;

- c. Plaintiff shall take any and all steps necessary to secure a pension for 20 years of service from the Police and Fire Retirement System no later than October 1, 2009, and for a retirement date of December 31, 2009;
- d. Plaintiff shall complete the purchase of any military, township council or other time that is available to him no later than September 1, 2009. Plaintiff is solely responsible for purchasing any such time;
- e. Plaintiff shall be responsible for all liens, including, but not limited to, health care services, temporary disability and unemployment compensation;
- f. Plaintiff understands and agrees that he is forever barred from seeking or accepting employment in any capacity with Defendant Egg Harbor Township upon signing this Settlement Agreement and Release, other than as an elected official.

3. **DISMISSAL OF ACTION.**

Plaintiff understands and agrees that counsel for Releasees shall file with the Superior Court of New Jersey, Atlantic County, an executed Stipulation of Dismissal. The Parties understand and agree that the terms of the aforesaid Dismissal are expressly incorporated by reference within the Settlement Agreement and General Release as if fully set forth herein.

4. **RELEASE.**

In consideration for the payment and other consideration provided for in this agreement, Plaintiff, personally and for his estate and/or his heirs, waives, releases, and gives up any and all claims, demands, obligations, damages, liabilities, causes of action and rights, in law or in equity, known and unknown, that he may have against Releasees and any and all of their officers, officials, employees (present and former), and their respective successors and assigns, heirs, executors and legal or personal representatives, based upon any act, event, or omission of any kind occurring before the execution of this Agreement, including, but not limited to, any claim that was asserted or could have been asserted under any federal and/or state statutes, regulations and/or common law, expressly including but not limited to any potential claim relating to the following (including any amendments thereto):

- a. The National Labor Relations Act;
- b. Title VII of the Civil Rights Act of 1964;
- c. Sections 1981 through 1988 of Title 42 of United States Code;
- d. The Employment Retirement Income Security Act of 1974;
- e. The Immigration Reform Control Act;
- f. The Americans with Disabilities Act;
- g. The Age Discrimination in Employment Act of 1967;
- h. The Fair Labor Standards Act;

- i. The Occupational Safety and Health Act;
- j. The Family and Medical Leave Act of 1993;
- k. The Equal Pay Act;
- l. The New Jersey Law Against Discrimination;
- m. The New Jersey Minimum Wage Law;
- n. The Equal Pay Law for New Jersey;
- o. The New Jersey Worker Health and Safety Act;
- p. The New Jersey Family Leave Act;
- q. The New Jersey Conscientious Employee Protection Act;
- r. Any anti-retaliation provision of any statute or law;
- s. Any other federal, state or local, civil or human rights law or any other local, state or federal law, regulation or ordinance, any provision of any federal or state constitution, any public policy, contract, tort or common law, or any losses, injuries or damages (including back pay, front pay, liquidated, compensatory or punitive damages, attorney's fees and litigation costs).

Plaintiff acknowledges that he has twenty-one (21) days to review and consider this Release and that his execution of this Release prior to the expiration of that time period constitutes an express waiver to the consideration period.

5. **NO CLAIMS PERMITTED/COVENANT NOT TO SUE.**

Plaintiff waives his right to file any charge or complaint on his own behalf, to participate as a complainant, a plaintiff or a charging party in any charge or complaint, or to collect damages as a result of any charge or complaint which may be made by any other person or organization on his behalf, with respect to anything which has happened up to the execution of this Agreement, before any federal, state or local court or administrative agency against Releasees except as such waiver is prohibited by law.

6. **CONFIDENTIALITY.**

The Parties agree that this Release contains no confidentiality agreement. Parties agree that their statements concerning the amount of this settlement shall be limited to "The matter has been resolved to the satisfaction of the parties."

7. **NEUTRAL JOB REFERENCE.**

The defendants agree that should any person or entity seek information regarding plaintiff's employment with defendants, the defendants shall state only plaintiff's start date, final employment date, and, once the disciplinary charges and findings have been withdrawn, shall state that plaintiff has a pristine disciplinary record.

8. **NO ADMISSION OF LIABILITY.**

It is expressly understood that neither the execution of this agreement, nor any other action taken by Releasee in conjunction with Plaintiff's alleged claims or this settlement, constitute admission by Releasee of any violation of any law, duty or obligation and that Releasees specifically deny any liability to Plaintiff or to any other person.

9. **ENTIRE AGREEMENT.**

This Agreement contains the sole and entire Agreement between the Parties. Plaintiff represents and acknowledges that, prior to executing this Agreement, he consulted with his attorney and that he has had ample time to do so, and that he obtained the advice of his counsel prior to making the decision to execute this Agreement, and that he has not relied upon any representation or statement not set forth in this Agreement made by any other party hereto, or their counsel or representatives, with regard to the subject matter of this Agreement. No other promises or agreements shall be binding unless in writing, signed by the Parties hereto, and expressly stated to represent an amendment to this Agreement.

10. **SEVERABILITY.**

The Parties agree that if any Court declares any portion of this Agreement unenforceable, the remaining portion or portions shall be fully enforceable.

11. **APPLICABLE LAW.**

This Settlement Agreement and General Release shall be construed and interpreted in accordance with the laws of the State of New Jersey. The parties agree that any action to enforce or interpret this Settlement Agreement and General Release shall only be brought in a court of competent jurisdiction in the State of New Jersey, which the parties agree shall be the Superior Court of New Jersey.

