



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Bianca White and
Tiasha Wright, City of Newark

CSC Docket Nos. 2021-414 and 2021-
415

Requests for Interim Relief

ISSUED: DECEMBER 21, 2020 (SLK)

Bianca White and Tiasha Wright, Police Officers with Newark, represented by Giovanna Giampa, Esq., petition the Civil Service Commission (Commission) for interim relief regarding their immediate and indefinite suspensions. These matters have been consolidated due to common issues presented.

By way of background, it was alleged that on August 31, 2020, White removed items from a home, specifically a case of water and a phone charger, which was caught on the body worn camera (BWC). These items were never placed in evidence. It was also alleged that while outside the location, White engaged in conversation with Wright regarding a speaker in the apartment and White was caught on video stating, "The speaker could be sold or used at a cookout." Both officers returned to the location and finding the door was locked, White took her keys and pried the door open, and then they entered the apartment. It was alleged that White deactivated her BWC, and Wright improperly took the speaker. Additionally, it was alleged that White deactivated her BWC after having responded to assist other officers search the home after the discovery of an open door. On that same date, the County Prosecutor issued charges for two third and fourth degree crimes to both White and Wright for their actions. Newark indicates that on September 2, 2020, it issued Preliminary Notices of Disciplinary Actions (PNDA) to White and Wright, immediately suspending them without pay. Newark states that the criminal charges were served on September 4, 2020. Newark presents that on September 25, 2020, a limited purpose hearing was held, and White's and Wright's suspensions without pay were sustained indefinitely.

In their requests, White and Wright assert that there is a clear likelihood of success on the merits as their suspensions without pay are unnecessary as any criminal investigation can be carried out while they are on modified duty or suspended with pay. They present that under *Herzog v. Township of Fairfield*, 349 N.J. Super. 602 (App. Div. 2002), the Court found that, in accordance with N.J.S.A. 40A:14-149.1, suspensions without pay are precluded for officers solely charged with violation of departmental rules or regulation, except in instances where the conduct is equivalent to the most serious of crimes involving moral turpitude or dishonesty. *Id.* at 608.

Further, White and Wright state that they are in danger or immediate or irreparable harm if their requests are not granted as they are without any source of income, and due to the pending administrative charges, they will be unable to gain any source of temporary employment. Additionally, they indicate that there is no end to how long the indefinite suspension shall be in effect. White and Wright present that due to the current pandemic, criminal matters are effectively stalled, and no grand juries are convening. White and Wright also argue that their indefinite suspensions are effectively an adjudication before the adjudication of the charges, in violation of their due process rights.

Moreover, White and Wright argue that there shall be no substantial injury to Newark if their requests are granted. They state that it is in the public's best interest to reinstate them as a Police Officers so that they can serve the public in that capacity. Additionally, White and Wright indicate they could be placed on modified duty in the interim if Newark is concerned about the optics related to these cases. They contend that assigning them modified duty would allow Newark, which is already facing personnel shortages due to the pandemic, two more officers reporting to work, which would also allow them to have a source of income. White and Wright argue that the public interest is best served when employers follow the procedures that have been prescribed for Civil Service employees. They assert that Newark's suspension policies are inconsistent, as officers in the past have been reinstated even with more serious pending criminal charges. White and Wright request that they be immediately reinstated with back pay, seniority and benefits retroactive to their suspension date.

In response, Newark, represented by France Casseus, Assistant Corporation Counsel, presents that under N.J.S.A. 40A:14-149.1, a Police Officer who has been charged with an offense which is a high misdemeanor, or which involves moral turpitude or dishonesty, may be suspended, without pay, until the case is disposed of at trial, or until the complaint is dismissed or until the prosecution is terminated. Additionally, Newark states that under N.J.A.C. 4A:2-2.5(a)2, an employee may be suspended immediately when the employee is formally charged with a crime of the first, second or third degree, or a crime of the fourth degree on the job or directly related to the job.

Newark states that the requests do not meet the standard for interim relief as their actions do not establish a clear likelihood of success as they were charged with third and fourth degree crimes for conduct while on duty. Further, it indicates that their actions were caught on the BWC and by a private citizen. Additionally, Newark asserts that White and Wright engaged in crimes of dishonesty and the applicable statutes enable it to suspend them without pay. Additionally, it presents that their loss of income is not considered irreparable harm as it can be remedied through the award of back pay upon the dismissal or resolution of the pending criminal charges. Moreover, Newark argues that the public will suffer substantial injury if White and Wright are returned to work with pending criminal charges and their actions impugned the integrity of the Police Department. As such, it asserts that allowing them to return to duty with the pending charges would insult the police staff and affect the safety, health order and effective direction of public services. Finally, Newark argues that White's and Wright's actions do not meet the high standard of a Police Officer and the taxpayers should not have to pay them under these circumstances.

CONCLUSION

Pursuant to *N.J.A.C.* 4A:2-1.2(c), the standards to be considered regarding a petition for interim relief are:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm if the request is not granted;
3. Absence of substantial injury to other parties if the request is granted;
- and
4. The public interest.

N.J.S.A. 40A:14-149.1 provides, notwithstanding any other law to the contrary, whenever any municipal police officer is charged under the law of this State, another state, or the United States, with an offense, said police officer may be suspended from performing his duties, with pay, until the case against said officer is disposed of at trial, until the complaint is dismissed, or until the prosecution is terminated; provided, however, that if a grand jury returns an indictment against said officer, or said officer is charged with an offense which is a high misdemeanor or which involves moral turpitude or dishonesty, said officer may be suspended from his duties, without pay, until the case against him is disposed of at trial, until the complaint is dismissed or until the prosecution is terminated.

N.J.S.A. 11A:2-13 provides, in pertinent part, this section shall not prohibit the immediate suspension of an employee without a hearing if the appointing authority determines that the employee is unfit for duty or is a hazard to any person if allowed to remain on the job or that an immediate suspension is necessary to maintain safety, health, order or effective direction of public services. In addition,

where a suspension is based on a formal charge of a crime of the first, second or third degree, or a crime of the fourth degree if committed on the job or directly related to the job, the suspension may be immediate and continue until a disposition of the charge. The Civil Service Commission shall establish, by rule, procedures for hearings and suspensions with or without pay.

N.J.A.C. 4A:2-2.5(a)2 provides that an employee may be suspended immediately when the employee is formally charged with a crime of the first, second or third degree, or a crime of the fourth degree on the job or directly related to the job. *N.J.A.C.* 4A:2-2.5(b) provides, in pertinent part, that an immediate suspension can be without pay.

N.J.S.A. 4A:2-2.7 provides, in pertinent part, when an appointing authority suspends an employee based on a pending criminal complaint or indictment, a hearing shall be limited to the issue of whether the public interest would best be served by suspending the employee until disposition of the criminal complaint or indictment. The standard for determining that issue shall be whether the employee is unfit for duty or is a hazard to any person if permitted to remain on the job, or that an immediate suspension is necessary to maintain safety, health, order, or effective direction of public services. The appointing authority may impose an indefinite suspension to extend beyond six months where an employee is subject to criminal charges as set forth in *N.J.A.C.* 4A:2-2.5(a)2, but not beyond the disposition of the criminal complaint or indictment.

Initially, White and Wright argue that they cannot be suspended without pay under *Herzog v. Township of Fairfield*, 349 *N.J. Super.* 602 (App. Div. 2002) and *N.J.S.A.* 40A:14-149.1. However, as the allegations in these matters involve conduct that is equivalent to the most serious of crimes involving moral turpitude or dishonesty, it was appropriate for Newark to immediately suspend White and Wright without pay under this statute. Further, it was also appropriate for Newark to immediately suspend them without pay under *N.J.A.C.* 4A:2-2.5(a)2 and *N.J.A.C.* 4A:2-2.5(b) as they were charged with third and fourth degree crimes for conduct on the job or directly related to the job. Additionally, it was appropriate for Newark to immediately and indefinitely suspend White and Wright under *N.J.A.C.* 4A:2-2.5(a)2 and *N.J.A.C.* 4A:2-2.7, as the serious criminal allegations necessitate their suspensions as such actions are necessary for Newark to maintain safety, health, order, or effective direction of public services. See *In the Matter of George Bello* (MSB, decided May 10, 2006).

Further, the information provided in support of the instant petition does not demonstrate a clear likelihood of success on the merits. A critical issue in any disciplinary appeal is whether the petitioner's actions constituted wrongful conduct warranting discipline. The Commission will not attempt to determine such a disciplinary appeal on the written record absent conclusive outcomes of the pending

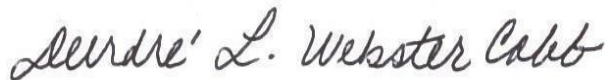
criminal charges. Further, while the Commission is cognizant of White's and Wright's financial situations, the harm that they are suffering while awaiting the outcome of the criminal proceedings is financial in nature, and as such, can be remedied by the granting of back pay should they ultimately prevail.¹ This is true even if the outcome of the criminal proceedings are delayed due to the current pandemic. Additionally, given the serious nature of the disciplinary charges at issue, the public interest is best served by not having White and Wright on the job pending the outcome of any such charges.

ORDER

Therefore, it is ordered that these petitions be denied.

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
THE 16TH DAY OF DECEMBER 2020



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¹ It is noted that even if White and Wright prevail in the criminal proceedings, they still may be subject to disciplinary proceedings based on administrative charges as the standard for employee discipline is lower than the standards for violation of criminal laws.

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