



STATE OF NEW JERSEY

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

In the Matter of Erik Blount, *et al.*,
Newark

CSC Docket Nos. 2021-391, *et al.*

Reconsideration

ISSUED: NOVEMBER 27, 2020 (SLK)

The City of Newark (Newark), represented by France Casseus, Assistant Corporation Counsel, requests reconsideration of *In the Matter of Erik Blount* (CSC, decided June 17, 2020), *In the Matter of Tashia Jones* (CSC, decided June 17, 2020), *In the Matter of Norberto Soares* (CSC, decided June 17, 2020) and *In the Matter of Michael Chirico* (CSC, decided June 17, 2020) and *In the Matter of Erik Blount, et al.* (CSC, decided September 2, 2020) where Newark was ordered to provide back pay and either reinstate the employees or commence departmental hearings and pay fines of \$4,000 for non-compliance.

By way of background, Blount, Jones, Soares and Chirico (petitioners) were initially served Preliminary Notices of Disciplinary Action (PNDAs) suspending them “indefinitely” without pay and charging them with violating various rules and regulations. Thereafter, limited hearings were held, and the petitioners were served Final Notices of Disciplinary Actions (FNDAs) which sustained the charges and continued their indefinite suspensions without pay. Subsequently, the petitioners petitioned the Civil Service Commission (Commission) for interim relief arguing that they could not be indefinitely suspended.¹ In response, this agency advised Newark that since the specifications in the FNDAs did not indicate that the petitioners were subject to pending criminal charges, it could not indefinitely suspend them without pay and that departmental hearings needed to be held within 30 days of issuing the

¹ The record indicates that Soares’ and Chirico’s March 3, 2020 requests for interim relief were faxed to Kecia Daniels, who is an authorized representative for Newark’s appointing authority. Additionally, an authorized union representative for Soares submitted a March 5, 2020 interim relief request on behalf of Soares, which was e-mailed to France Casseus and Anthony Ambrose, Public Safety Director. Blount’s and Jones’ March 5, 2020 requests for interim relief were faxed to Aondrette Williams, who is the appointing authority for Newark.

PNDAs. Therefore, this agency requested that Newark comply with the applicable administrative provisions and either immediately hold departmental hearings on the merits of the charges and issue new FNDAs indicating the disposition of the charges and the penalty, if applicable, or amend the FNDAs indicating that the suspensions were with pay and the reasons for the continued suspensions.² Despite being provided this opportunity, Newark did not respond.

Thereafter, in the above-mentioned cases decided on June 17, 2020³, the Commission ordered that within 20 days, the petitioners were to be reinstated or departmental hearings on the merits of the charges must be commenced.⁴ The Commission also warned Newark that if it failed to hold departmental hearings and issue new FNDAs or reinstate the petitioners within the specified time frame, upon the Commission finding that Newark had not complied with these orders, the Commission would impose fines up to \$10,000 pursuant to *N.J.A.C. 4A:10-2.1*.

Subsequently, the petitioners filed requests for enforcement as Newark failed to hold departmental hearings and issue new FNDAs or reinstate the petitioners within the specified time frame as ordered by the Commission.⁵ As Newark failed to respond, the Commission ordered Newark within 20 days of September 7, 2020⁶ to either reinstate the petitioners or commence departmental hearings on the merits of the charges. Additionally, its fined Newark \$4,000 for its non-compliance. Further, Newark was warned that continued non-compliance could lead to fines up to \$10,000 for each separate violation.

On reconsideration, Newark states that it did not respond to the initial applications or enforcement actions as it was unaware of the pending applications. It seeks reconsideration of the back pay awards from the initial applications and the imposition of fines in the enforcement order. Newark seeks reinstatement of the suspensions without pay from the initial suspension dates until disposition of the criminal charges. Newark describes the incident that took place on January 18, 2020, which led to the subject suspensions. Additionally, Newark presents that on April 9, 2020, the petitioners were indeed charged with third-degree crimes that constituted crimes of dishonesty that originated from this incident. Newark seeks

² This agency's May 14, 2020 letter to Newark was emailed to Kenyatta Stewart, Corporation Counsel and Williams.

³ The June 17, 2020 decisions were e-mailed to Stewart and Williams on June 19, 2020.

⁴ The Commission also ordered that the petitioners were to receive back pay until they were either reinstated or issued a new FNDA. Specifically, Erik Blount and Tashia Jones were to be awarded back pay from March 25, 2020 forward, and Norberto Soares and Michael Chirico were to be awarded back pay from March 20, 2020 forward.

⁵ The record indicates that the petitioners' July 16, 2020 request for enforcement was sent to Kenyatta Stewart via regular mail. This agency's August 5, 2020 letter acknowledging the request for enforcement was sent to Stewart and Williams via e-mail.

⁶ The September 2, 2020 decision was e-mailed to Stewart and Williams on September 7, 2020.

reconsideration as it argues that had the Commission known about these pending criminal charges, the initial interim relief request would have been denied.

Additionally, Newark submits a certification from Kenyatta Stewart, Corporation Counsel, who indicates that these matters were first brought to his attention on September 25, 2020.⁷ He indicates that he never received any communication from the Commission in his e-mail. However, upon learning of these matters, he checked his junk e-mail and discovered communication from this agency dated August 5, 2020 concerning the requests for enforcement. Thereafter, Stewart states that he learned about the initial applications in March 2020. He asserts that the Law Department did not receive hard copies of these matters. Stewart explains that he receives countless e-mails from parties that he communicates with daily, which has only increased due to the on-going public health emergency. He indicates that he does not check his junk e-mail regularly and only checked it here once he learned about the correspondence that was sent to him. Stewart states that the practice has been that once the Law Department receives a hard copy of moving papers, which are given priority, they are assigned to appropriate staff. His staff confirms that the Law Department did not receive any hard copies in these matters. Stewart asserts that it is his understanding that the Commission's general practice has been to correspond by both e-mail and by hard copy through the mail. He indicates that the petitioners were served formal charges by the Essex County Prosecutor's Office on or about April 9, 2020, which was four months prior to the enforcement action. Stewart asserts that if he had received any correspondence from the Commission, especially the enforcement action, Newark would have vigorously opposed the motion and argued against reinstating the officers, as by that time, the officers had been served with formal criminal charges.

Newark asserts that the petitioners cannot establish a clear likelihood of success based on their actions. Further, the petitioners have not stated any facts supporting a danger of immediate or irreparable harm if Newark's request is granted as 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. To the contrary, Newark states that the petitioners' behavior has impugned the integrity of the Newark Police Department and to allow the petitioners to remain on the payroll pending criminal charges would be an insult to the hard-working police staff. Further, it would affect the safety, health order and effective direction of public service.

In response, the petitioners, represented by Giovanna Giampa, Esq., refer to their initial requests for interim relief filed on April 15, 2020,⁸ as to the legal merits

⁷ France Casseus also certified that these matters were first brought to her attention on September 25, 2020.

⁸ As stated above, the record indicates that the requests for interim relief were filed by petitioners' counsel were filed on March 3, 2020 and March 5, 2020 and not April 15, 2020. Further, the record

of those requests. Concerning Newark's request for reconsideration, the petitioners assert that considering the pandemic, Newark has no excuse for not diligently checking a high-trafficked e-mail address, including the junk and spam folder. Additionally, they present that the initial requests were sent via e-mail and regular mail by the petitioners' counsel's office. Therefore, the petitioners argue that Newark cannot claim lack of notice on their initial requests, or the follow-up e-mail sent by this agency on May 14, 2020. As such, they assert that the only matter that Newark is not out of time to file is the reconsideration request regarding the Commission's September 2, 2020 enforcement order. The petitioners highlight that they remain suspended without pay since January 30, 2020, and request that Newark's request for reconsideration be denied. Finally, it indicates that Soares withdraws his appeal.⁹

CONCLUSION

N.J.A.C. 4A:2-1.6(a) provides within 45 days of receipt of a decision, a party to the appeal may petition the Civil Service Commission for reconsideration. *N.J.A.C.* 4A:2-1.6(b) provides that a petition for reconsideration shall be in writing signed by the petitioner or his or her representative and must show the following:

1. The new evidence or additional information not presented at the original proceeding, which would change the outcome and the reasons that such evidence was not presented at the original proceeding; or
2. That a clear material error has occurred.

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. 11A:2-13 and *N.J.A.C.* 4A:2-2.5(a)1 provides that an employee may be suspended immediately and prior to a hearing where it is determined that 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. However, a PNDA with opportunity for a

indicates that those requests were faxed to the appointing authority and not sent via regular mail and email.

⁹ The Commission rejects this request. The current matter is no longer an appeal or petition from Soares. Rather, it is Newark's request for reconsideration. Soares could have only "withdrawn" prior to the Commission's original decisions in these matters.

hearing must be served in person or by certified mail within five days following the immediate suspension. *N.J.A.C.* 4A:2-2.5(d) indicates that a departmental hearing, if requested, shall be held within 30 days of the PNDA unless waived by the employee or a later date as agreed to by the parties. *N.J.A.C.* 4A:2-2.6(d) states that within 20 days of the hearing, or such additional time as agreed to by the parties, the appointing authority shall make a decision on the charges and furnish the employee either by personal service or certified mail with a FNDA.

N.J.A.C. 4A:2-2.7 provides, in pertinent part, that an indefinite suspension can only be imposed where there is a “pending criminal complaint or indictment.”

Per *N.J.A.C.* 4A:2-2.4(b), in local service, the appointing authority may provide that a suspension be with or without pay.

N.J.A.C. 4A:1-1.2(c) states that the Civil Service Commission (Commission) may relax a rule for good cause in order to effectuate the purposes of Title 11A, New Jersey Statutes.

In this matter, the Commission finds that Newark has met the standard for reconsideration. Specifically, the record now indicates that the petitioners were actually served criminal charges on April 9, 2020. As such, considering *N.J.A.C.* 4A:2-2.7, the petitioners should have contacted this agency to correct the record. Additionally, in this agency’s May 14, 2020 letters to Newark, where petitioners’ counsel was copied, the petitioners were notified that the Commission’s record in these matters did not indicate that the petitioners had pending criminal charges; yet the petitioners continued to not correct the record. Further, in the Commission’s June 17, 2020 decisions, the Commission indicated that the basis for its orders were that the record did not indicate that the petitioners had pending criminal charges. Not only did the petitioners not correct the record; they also sought enforcement of the Commission’s decision, which was also granted on September 2, 2020, based on this inaccurate record. Therefore, even though Newark’s request for reconsideration of the June 17, 2020 decisions is not timely, as the petitioners did not provide the Commission with accurate information regarding their underlying status, the Commission finds good cause to relax the provisions of *N.J.A.C.* 4A:2-1.6(a) and accept Newark’s untimely request as it would be inequitable for the petitioners to benefit from inaccurate information, which was the basis for granting their interim relief requests, when they were alerted that the Commission’s record was inaccurate, and did nothing to correct the record.

Regarding the merits, the petitioners’ indefinite suspensions, which could have only begun on April 9, 2020, were permissible under *N.J.A.C.* 4A:2-2.7 as all the petitioners actually had pending criminal charges as of that date. Additionally, the information provided in support of petitioners’ original requests for interim relief do not demonstrate a clear likelihood of success on the merits. Clearly, without

demonstrating a likelihood that they will be found not guilty of the criminal charges, the petitioners cannot demonstrate a clear likelihood of success on the merits. Moreover, the Commission will not make such a decision absent a decision on those criminal charges in the proper forum. Further, while the Commission is cognizant of the petitioners' financial situations, the harm that they are suffering while awaiting the outcomes of their criminal matters is financial in nature, and as such, can be remedied by the granting of back pay should they ultimately prevail regarding those charges.¹⁰ Moreover, given that the petitioners are law enforcement officers who are held to a higher standard, and given that they are subject to criminal charges, the public interest is best served by not having the petitioners on the job pending the outcome of their criminal matters. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also, In re Phillips*, 117 N.J. 567 (1990). Accordingly, the Commission grants Newark's requests for reconsideration regarding the indefinite suspensions and finds that the petitioners are considered indefinitely suspended pending the outcome of the criminal charges, effective April 9, 2020.

Further, as the incidents underlying the charges ultimately led to criminal charges, there was clearly a basis for **immediate** suspensions of the petitioners in January 2020.¹¹ Regardless, pursuant to N.J.A.C. 4A:2-2.5(a)1, N.J.A.C. 4A:2-2.5(d) and N.J.A.C. 4A:2-2.6(d), such a suspension can only generally span a 55 days from its inception, allowing for the maximum time for the departmental hearing process to be completed. Accordingly, in this case, given the procedural due process violations committed by Newark by imposing immediate suspensions spanning more than the time permitted, the Commission orders that Blount's, Chirico's and Jones' immediate suspensions beginning on January 30, 2020 shall be considered without pay through March 24, 2020, and thereafter they are entitled to back pay through April 8, 2020; and Soares' immediate suspension beginning on January 24, 2020 shall be considered without pay through March 19, 2020, and thereafter he is entitled to back pay through April 8, 2020.

Concerning Newark's request for reconsideration of the \$4,000 fine that was imposed for its non-compliance with the Commission's June 17, 2020 order, that request is denied. The Commission is specifically given the power to assess compliance costs and fines against an appointing authority, including all administrative costs and charges, as well as fines of not more than \$10,000, for noncompliance or violation of Civil Service law or rules or any order of the Commission. *See N.J.S.A. 11A:10-3; N.J.A.C. 4A:10-2.1(a)2. See In the Matter of*

¹⁰ It is noted that if the petitioners are cleared of their criminal charges, the petitioners need to be either immediately reinstated or a full departmental hearing on the merits of the charges must be commenced as the petitioners could still be subject to discipline as the standard for administrative discipline is lower than the standard for criminal charges.

¹¹ The Commission emphasizes that there was **not** a basis for indefinite suspensions in January 2020 since there were no criminal charges pending at that time.

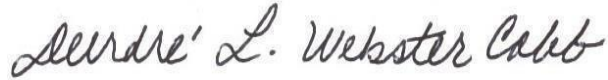
Fiscal Analyst (M1351H), Newark, Docket No. A-4347-87T3 (App. Div. February 2, 1989). The record indicates that Newark's appointing authority, law department, and/or public safety director were notified via fax, mail, and/or e-mail on multiple occasions throughout this process about the subject proceedings. Further, it is noted that due to the current pandemic, this agency as well as almost all agencies, have moved to e-mail as its primary form of communication as most organizations, including this agency, have had limited personnel on-site, and have been primarily working remotely. As such, Newark's knew, or should have known, that the primary form of communication from this agency, as well as other external stakeholders, would be via e-mail. It is also noted that this agency has been able to successfully communicate with other external stakeholders throughout the pandemic via e-mail. Additionally, the petitioners indicated that its July 16, 2020 request for enforcement was sent to Corporation Counsel via regular mail, yet Newark still did not respond to that matter even though it has indicated that regular mail is the manner to which it expects to receive communication. Moreover, the petitioners indicated that the interim relief requests, which were submitted before there were lockdowns due to the pandemic, were also faxed to the appointing authority. Finally, Newark's failure to have systems in place to deal with the way work is being conducted under the current health crisis has caused this agency to unnecessarily spend valuable resources on these matters as this is now the third decision being issued related to the subject petitioners.

ORDER

Therefore, it is ordered that Newark's request for reconsideration is granted in part and the petitioners are to be considered indefinite suspended without pay pending resolution of the criminal matters, effective April 9, 2020. Further, the petitioners are to be awarded back pay as indicated in this decision. Finally, Newark's request for reconsideration of the \$4,000 fine is denied. Newark shall provide back pay to the petitioners and remit the \$4,000 fine to this agency within 30 days of the issuance of this order. Failure to comply with this decision in any way will subject Newark to further fines up to a maximum of \$10,000.

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 24TH DAY OF NOVEMBER 2020



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries and Correspondence	Christopher S. Myers Director Division of Appeals and Regulatory Affairs Civil Service Commission Written Record Appeals Unit P.O. Box 312 Trenton, New Jersey 08625-0312
------------------------------------	--

c: France Casseus, Assistant Corporation Counsel
Aondrette Williams
Giovanna Giampa, Esq.
Erik Blount (CSC Docket No. 2021-391)
Tashia Jones (CSC Docket No. 2021-392)
Norberto Soares (CSC Docket No. 2021-393)
Michael Chirico (CSC Docket No. 2021-394)
Records Center
Division of Appeals and Regulatory Affairs