



After five days of hearings at the OAL, on May 21, 2014, the Mayor of Vineland issued an amended Final Notice of Disciplinary Action (FNDA) which dismissed all the charges against the appellant. Thereafter, by way of a letter dated June 4, 2014, the appellant requested to withdraw his appeal without prejudice. In his June 6, 2014 initial decision<sup>1</sup>, the ALJ indicated that the appellant's request to withdraw his appeal without prejudice was due to a controversy surrounding the validity of the Mayor's authority to dismiss the charges lodged against the appellant. The ALJ concluded that, pursuant to *N.J.A.C. 1:1-9.2*, the disciplinary charges against the appellant filed by the Vineland Police Department were withdrawn, but made no finding that his appeal had been withdrawn either with or without prejudice. Rather, the ALJ indicated that should the Commission, or any other agency, court, or tribunal subsequently determine that the Mayor's action dismissing the charges was *ultra vires*, the appellant's right to reinstitute his appeal shall be subject to a determination by the Commission.

In its exceptions, the Vineland City Council (Council) argues that it is opposed to the Mayor's action of dismissing the charges against the appellant. Further, Council states that dismissal of the charges is the result of a settlement agreement between the Mayor and the appellant. In this regard, Council states that a settlement is a contract and as a Mayor-Council form of government under the Faulkner Act, all contracts are subject to the approval of Council. In this case, Council notes that the agreement between the Mayor and the appellant was not presented to the Council for approval, and, in fact, it specifically rejects settlement. Further, Council argues that the Commission previously decided that it would be inappropriate to withdraw an appeal involving a Police Officer that spanned over two years, had numerous hearing dates, and presented issues of significant public interest relating to truthfulness and the ability to effectively function as a Police Officer. *See In the Matter of Rolan Carter* (CSC, decided May 18, 2011). In addition, Council contends that the public would be harmed if the appellant's appeal is withdrawn as the municipality would have the burden of awarding him back pay. In the alternative, Council requests the Commission to dismiss the matter with prejudice.

In his cross exceptions, the appellant asserts that the Mayor has withdrawn the charges against him and there is no longer a case or controversy which requires a Commission decision. The appellant adds that the Mayor has the authority to dismiss the charges since he is the appointing authority. Further, he states that the Council is part of a Faulkner "Strong Mayor/Weak Council" government and it has failed to provide any statutory or regulatory basis to show that the Mayor's issuance of the amended FNDA dismissing the charges was procedurally improper. In this regard, the dispute over the issuance of the amended FNDA is a political matter between the Mayor and Council. Moreover, the appellant states that he

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<sup>1</sup> It is noted that the initial decision indicates that the record is sealed. However, the order to seal only applies to certain exhibits, including those pertaining to the confidential informant.

should not be thrust into a political showdown between two adversarial political groups. The appellant adds that he is currently serving as a Police Officer in another jurisdiction where he is competently performing his duties. Moreover, Council has not articulated a reason to show that the ALJ's recommendation to withdraw the appeal is inappropriate. The appellant contends that Council's reliance on *In the Matter of Rolan Carter, supra*, is incorrect, as that matter involved an appellant who withdrew his appeal in order to pursue a claim in another forum. In contrast, the appellant argues that there is no other litigation pending in this matter.

In response, Council reiterates that it was inappropriate for the Mayor to issue the amended FNDA without its consent and that the appellant is attempting to manipulate the political process for his own gain. It claims that the appellant's attorney inappropriately contacted the Mayor with an offer to settle the disciplinary charges. In support, Council provides a transcript from a June 9, 2014 press conference to show that the appellant's attorney allegedly engaged in an *ex parte* communication with the Mayor.<sup>2</sup> Additionally, Council reiterates that the dismissal of the charges constitutes a settlement agreement, which is a contract subject to its approval. It adds that the settlement does not comply with the procedures as provided by *N.J.A.C. 1:1-19.1*. Therefore, Council requests that this matter proceed at OAL so the Commission can make a final determination as to the validity of the charges.

In response, the appellant argues that the Mayor's actions are irrelevant as he is not a party to the case. The appellant reiterates that the Mayor, in his capacity as the appointing authority, dismissed the charges. The appellant adds that Council should pursue any disputes regarding the dismissal of the charges in a different forum as the political issues only complicate this matter. The appellant explains that there was no settlement agreement and Council's contract-based arguments are not applicable. Moreover, the appellant states that the transcript of June 9, 2014 press conference should not be considered as it is irrelevant.

*N.J.A.C. 1:1-19.2(a)* provides that a party may withdraw a request for a hearing or a defense raised by notifying the judge and all parties. Upon receipt of such notification, the judge shall discontinue all proceedings and return the case file to the Clerk. If the judge deems it advisable to state the circumstances of the withdrawal on the record, the judge may enter an initial decision memorializing the withdrawal and return the matter to the transmitting agency for appropriate disposition. *N.J.A.C. 1:1-19.2(b)* states that when a party withdraws, the Clerk shall return the matter to the agency which transmitted the case to the OAL for appropriate disposition. *N.J.A.C. 1:1-19.2(c)* provides that after the Clerk has

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<sup>2</sup> The Council notes that the Mayor verbally confirmed at the press conference that "there was a settlement in this case."

returned the matter, a party shall address to the transmitting agency any motion to reopen a withdrawn case.

Pursuant to the above noted rules, an appellant generally has a right to withdraw an appeal. In the present matter, the appellant requests to withdraw his appeal since the Mayor dismissed the charges against him. Further, Council has not presented any substantive arguments to show that it is proper for the Commission to continue reviewing the matter. Since the Mayor, who is the appointing authority for Vineland, has withdrawn the charges against the appellant, the Commission cannot proceed with this matter since the underlying disciplinary charges no longer exist. Moreover, *In the Matter of Rolan Carter, supra*, is distinguishable from the present matter. In *Carter*, prior to the conclusion of the OAL hearing, the appellant filed a Law Against Discrimination (LAD) complaint in Superior Court and he requested to withdraw the OAL matter. However, the Commission denied the request, as the hearing occurred over the course of 23 days and it was close to the last hearing date. The Commission emphasized that permitting Carter to withdraw at that point in the process would be a waste of judicial resources and constituted inappropriate "forum shopping." Moreover, in *Carter*, the charges were not withdrawn but remained pending. In this case, the appellant's hearing only spanned five days and the Mayor, who is the appointing authority, withdrew the charges against the appellant.

Regarding Council's arguments that the Mayor does not possess the legal authority to dismiss the charges, that dispute is outside the scope of this appeal. It also argues that the "settlement agreement" between the Mayor and the appellant that led to the dismissal of the charges is a contract, which, under Vineland's form of government, is subject to approval by Council. However, any dispute Council has regarding the powers of the Mayor under a particular form of government should be pursued in an appropriate judicial forum. Germane to the matter at hand, *N.J.A.C. 4A:1-1.3* defines an appointing authority as a person or group of persons having the power of appointment or removal. In this case, agency records indicate that the Mayor is the designated appointing authority for Vineland. Further, the Mayor, in his capacity of the appointing authority, dismissed the charges against the appellant that led to the instant appeal. Moreover, no settlement has been presented to the Commission by either party. Rather, the only matter before the Commission is the appellant's request to withdraw his appeal. Accordingly, the Commission has no basis to reject or set aside the Mayor's dismissal of the charges and the question regarding the Mayor's authority will not be addressed as that matter is outside of the Commission's jurisdiction.

Additionally, Council's argument that the public will be harmed if the appellant is returned to duty is not persuasive. Although Council argues that it will now have the burden of litigating the charges in Superior Court, the Commission notes that it has no authority to limit the remedies available to parties who pursue

claims in other legal forums. In addition, Council's argument that it will have the burden of awarding back pay is not relevant as the Commission's decision in this matter simply acknowledges the withdrawal of the appeal and does not address back pay, counsel fees, reinstatement or any other issue.

Accordingly, this appeal was properly withdrawn in accordance with *N.J.A.C.* 1:1-19.2(a). However, consistent with its prevailing practice in acknowledging withdrawals as set forth in the Minutes of numerous meetings, the Commission notes that the withdrawal is without prejudice.

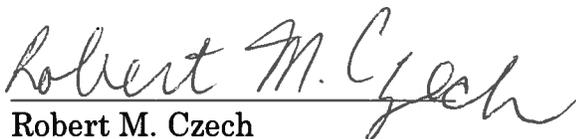
One final matter warrants comment. Although the withdrawal of the appeal is without prejudice, as discussed in *In the Matter of Jose Montalvo*, Docket No. A-0007-12T2 (App. Div. May 16, 2014), this characterization does not bind the Commission to accept a subsequent request by the appellant to reinstate his appeal absent a showing of good cause.

### ORDER

The Civil Service Commission acknowledges the appellant's withdrawal of his appeal without prejudice.

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 30<sup>TH</sup> DAY OF JULY, 2014



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Henry Maurer  
Director  
Division of Appeals  
& Regulatory Affairs  
Civil Service Commission  
P.O. Box 312  
Trenton, New Jersey 08625-0312

Attachment



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CSR 8054-11

AGENCY DKT. NO. N/A

**RECORD SEALED**

**IN THE MATTER OF GAMALIEL  
CRUZ, VINELAND POLICE DEPARTMENT.**

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**Stuart J. Alterman, Esq.**, for appellant (Alterman and Associates, attorneys)

**Michael E. Benson, Esq.**, for respondent (Buonadonna and Benson, attorneys)

Record Closed: June 4, 2014

Decided: June 6, 2014

**BEFORE BRUCE M. GORMAN, ALJ:**

**STATEMENT OF THE CASE**

Appellant appeals respondent's action terminating his employment as a Police Officer.

**PROCEDURAL HISTORY**

The appellant requested a fair hearing and the matter was originally filed at the Office of Administrative Law on June 4, 2012, to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. That matter was heard February

14, 2014; February 18, 2014; April 23, 2014; April 24, 2014; May 14, 2014, but was not completed. The record closed June 4, 2014, when the appellant withdrew the appeal.

### **FACTS**

On November 12, 2010, respondent Vineland Police Department filed a Final Notice of Disciplinary Action to terminate appellant's employment as a Police Officer with the City of Vinland. (Exhibit A ). Appellant appealed that determination, and the matter was brought to trial. After five days of trial, on May 21, 2014, Ruben Bermudez, Mayor of the City of Vineland, filed an Amended Final Notice of Disciplinary Action with the Civil Service Commission. (Exhibit B). That document purported to dismiss all charges against appellant.

On June 4, 2014, Stuart Alterman, Esq., attorney for appellant, authored a letter (Exhibit C) wherein he urged that he be permitted to withdraw the appeal without prejudice. That letter also contained the following language:

Nevertheless, please accept this letter as a withdrawal of the Cruz appeal in complete reliance of the Mayor Ruben Bermudez's drafting, and serving the Amdended Final Notice of Disciplinary Action on my client. . . .

The letter went on to note that counsel was requesting a withdrawal without prejudice because of controversy surrounding Mayor Bermudez's action. The letter implicitly suggested that the validity of the Mayor's action must abide ultimate disposition by the Civil Service Commission.

### **LEGAL DISCUSSION**

This decision is issued in accordance with the provisions of N.J.A.C. 1:1-19.2, which states:

A party may withdraw a request for a hearing or a defense raised by notifying the judge and all parties. Upon receipt of

such notification, the judge shall discontinue all proceedings and return the case file to the clerk. *If the judge deems it advisable to state the circumstances of the withdrawal on the record, the judge may enter an initial decision memorializing the withdrawal and returning the matter to the transmitting agency for appropriate disposition.*

[Emphasis added].

Having reviewed the letter of June 4, 2014, I am satisfied that it constitutes a withdrawal of the charges filed by the respondent Vineland Police Department against the appellant. That said, I make no **FINDING** that the appeal has been withdrawn either with prejudice or without prejudice. Appellant withdraws this matter at his own risk. Should the Civil Service Commission or any other agency, court, or tribunal subsequently rule that Mayor Bermudez's action dismissing the charges was ultra vires, then appellant's right to reinstitute this appeal shall be subject to the determination of the Civil Service Commission.

### **ORDER**

I **ORDER** that the appeal be deemed **WITHDRAWN**, and that the file be returned to the Civil Service Commission.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 40A:14-204.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



June 6, 2014

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DATE

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**BRUCE M. GORMAN, ALJ**

June 6, 2014

Date Received at Agency:

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Date Mailed to Parties:

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Jb/mpb

**DOCUMENTS IN EVIDENCE**

**EXHIBITS**

**For the Court:**

- A Final Notice of Dicipinary Action
- B Amended Final Notice of Dicipinary Avtion
- C Stuart J. Alterman, Esq. letter dated June 4, 2014