



STATE OF NEW JERSEY

**DECISION OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Neil Raciti,
Middlesex County

CSC Docket No. 2018-3711

Request for Interim Relief

ISSUED: AUGUST 17, 2018 (SLK)

Neil Raciti, a Sheriff's Officer with Middlesex County (County), represented by Peter B. Paris, Esq., petitions the Civil Service Commission (Commission) for interim relief regarding his indefinite suspension without pay, commencing on September 21, 2015.

By way of background, on March 29, 2015, the petitioner was involved in an incident while driving off duty in his personal vehicle where he believed he was being tailgated by the car behind him. The County describes the incident as the petitioner exiting his vehicle and approaching the vehicle which had been tailgating him. He then engaged in a profane verbal dispute with the other driver and then smashed the front window with his bare fist. Prior to the local police arriving on the scene, the petitioner brandished his Sheriff's Office badge, indicating that he was a police officer to justify his behavior. Additionally, he falsely accused the other driver of having assaulted him and committing other offenses which resulted in the other driver being issued summonses. Thereafter, the petitioner was charged on April 1, 2015 with Criminal Mischief¹, a disorderly persons offense (the "road rage" incident). The County states that it did not immediately conduct an investigation into the matter or issue a Preliminary Notice of Disciplinary Action (PNDA) against the petitioner because it gave him the benefit of the doubt that he was the victim in this incident. Then, on September 21, 2015, due to an unrelated complaint of

¹ The date of the Criminal Mischief charge comes from the Superior Court's Memorandum of Decision on Motion for Reconsideration addressing the County Prosecutor's motion of forfeiture of public office against the petitioner.

domestic violence against the petitioner by his wife, the County served the petitioner with a PNDA with charges related only to the domestic violence allegation, which immediately and indefinitely suspended him without pay pending the disposition of criminal charges. Subsequently, on May 27, 2016, after a probable cause hearing in municipal court that arose from the “road rage” incident², the petitioner was indicted on fourth degree crimes, including falsely incriminating another and various unsworn falsification to authorities’ counts. Further, on that same day, the petitioner was indicted on counts concerning the domestic violence allegation which included aggravated assault, a third degree crime, and prohibited weapons and devices – a large capacity magazine, a fourth degree crime. On November 29, 2016, the weapons count was dismissed and, on June 6, 2017, the petitioner was found not guilty of the aggravated assault count. In a June 22, 2017 letter, the County advised the petitioner that an internal affairs complaint was made against him regarding the “road rage” incident.

On September 21, 2017, the petitioner was acquitted for the indictable offenses for the “road rage” incident, but was found guilty of Criminal Mischief. On September 22, 2017, the County Prosecutor filed a motion pursuant to *N.J.S.A. 2C:51-2* that the petitioner forfeit public office due to the Criminal Mischief conviction. On December 8, 2017, the Superior Court denied the County Prosecutor’s motion and on or about March 5, 2018, the County Prosecutor’s motion for reconsideration was also denied. Thereafter, on or about March 14, 2018, the County Prosecutor appealed the denial of its motion for forfeiture of public office against the petitioner to the Appellate Division. In a letter dated June 13, 2018, the petitioner filed the subject request for interim relief. By letter dated July 2, 2018, the County Prosecutor authorized the County to proceed administratively concerning the “road rage” charges and the County received the County Prosecutor’s discovery evidence for this incident on July 6, 2018. On July 6, 2018, the County issued a letter to the petitioner informing him that as of July 12, 2018, his suspension without pay was being lifted and he should return to the office on that date. Additionally, the letter contained a PNDA, dated July 6, 2018, that indicated that he was being suspended due to charges related to the “road rage” incident. On July 12, 2018, the petitioner appeared at the office and was served with an amended PNDA which indicated that the effective date of his suspension was July 13, 2018³, his removal was effective March 29, 2015 and his departmental hearing would be on July 24, 2018. The petitioner was afforded a pre-termination hearing, which he waived and was suspended without pay, effective July 13, 2018 pending a departmental hearing. Thereafter, the petitioner requested that the departmental hearing be held on August 8, 2018.

² The date of the probable cause hearing is not indicated in the record.

³ As there does not seem to be any dispute as to the propriety of this immediate suspension, no further review of that action will be undertaken.

In support of his request for interim relief, the petitioner asserts that the County's failure to reinstate him or serve him with administrative charges violates *N.J.A.C. 4A:2-2.10(c)* which provides that the employee shall receive back pay, benefits and seniority once the employee is found not guilty or the criminal complaint is otherwise dismissed. He presents that he was acquitted on June 6, 2017 and no other PNDA was served against him with administrative charges regarding the domestic violence incident. Therefore, the petitioner asserts that he is entitled to back pay, benefits and seniority from September 21, 2015 to the date of reinstatement or the service of a viable PNDA. He argues that in the absence of administrative charges, he must be reinstated or, at minimum, receive back pay. The petitioner cites cases where the Civil Service Commission (Commission) ordered back pay from the time the criminal charges were dismissed until the issuance of a new PNDA that were not dependent on criminal charges. The petitioner acknowledges that his back pay request is not "irreparable harm" since economic harm is not considered irreparable. However, it presents that the Commission is charged with enforcing its rules and the petitioner has been suspended for three years, even after he was acquitted of the charges that caused his suspension. The petitioner argues that if his request is not granted, the County shall have no incentive to follow civil service rules in similar situations. He states that the amended July 12, 2018 PNDA was in response to his request for interim relief and argues that these actions constitute a constructive admission by the County that he has been improperly suspended from September 21, 2015 through July 12, 2018.

In response, the County, represented by Benjamin D. Leibowitz, Senior Deputy County Counsel, argues that the petitioner failed to demonstrate a clear likelihood of success on the merits as he was found guilty of Criminal Mischief. Further, it asserts that it acted as promptly as it could as it was not until July 2, 2018 that the County Prosecutor instructed it to proceed administratively in this matter. Thereafter, the County received the County Prosecutor's evidence on July 6, 2018 and immediately issued and served administrative charges to the petitioner for his removal due to his conduct during the "road rage" incident. It contends it did not do so earlier since, pursuant to the Attorney General's Guidelines involving possible criminal acts on the part of an officer, it did not have the authority to investigate the "road rage" incident and issue a PNDA for this incident until directed by the County Prosecutor. Specifically, it presents that the guidelines state:

Where preliminary investigation indicates the possibility of a criminal act on the part of the subject officer or the investigation involves the use of force by the officer which results in serious bodily injury or death, the county prosecutor must be notified immediately. In either case, no further action should be taken, including the filing of charges against the officer, until directed by the county prosecutor.

It emphasizes that although the petitioner was acquitted of the charges in the indictment for the “road rage” incident, the criminal standard is proof beyond a reasonable doubt. The County presents that the standard for an administrative proceeding is proof by a preponderance of the evidence and it asserts that it will meet this standard for the charges related to the “road rage” incident. It argues that this matter is distinguishable from the cases that the petitioner presents because it has substantiated why the petitioner was not immediately reinstated or served a PNDA following the dismissal of the counts in the “road rage” incident and none of those cases involved a request for interim relief. Further, the County presents that the petitioner has failed to demonstrate immediate or irreparable harm as he has not submitted an affidavit or certification specifying the harm. Additionally, it states that the petitioner failed to demonstrate the absence of substantial injury to other parties if he is immediately reinstated as he has serious anger management problems as demonstrated by the “road rage” and the domestic violence incidents. The County represents that the petitioner’s reinstatement should be conditioned upon his passing a fitness for duty exam and being psychologically cleared to return to work and carry a weapon. Otherwise, he could pose a danger to the public, co-workers and himself. Finally, it argues that the public interest is adversely affected if he was granted immediate reinstatement and back pay as the County Prosecutor’s appeal to the Appellate Division concerning the petitioner forfeiting his public employment and the administrative charges against the petitioner are still pending. It emphasizes that if the petitioner were to receive back pay before the public employment job forfeiture appeal is decided or before being administratively removed and that removal is upheld, the petitioner would have to reimburse the County. Therefore, it argues that it is in the taxpayer’s best interest to not award back pay at this time.

CONCLUSION

N.J.A.C. 4A:2-1.2(c) provides the following factors for consideration in evaluating petitions for interim relief:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm;
3. Absence of substantial injury to other parties; and
4. The public interest.

However, in reviewing this matter, it is not necessary to address the merits of the charges against the petitioner. Rather, the issues to be determined are whether the County presented a valid basis to immediately and indefinitely suspend the petitioner and whether the County was justified in continuing to indefinitely suspend the petitioner after he was acquitted on the criminal charges concerning the September 21, 2015 PNDA without issuing a second PNDA related to the “road rage” incident.

N.J.S.A. 11A:2-13 and *N.J.A.C.* 4A:2-2.5(a)1 and 2 provide that an employee may be suspended immediately and prior to a hearing when the employee has been 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, or 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.

N.J.A.C. 4A:2-2.7(a)2 provides that an employee 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.

N.J.A.C. 4A:2-2.10(c) provides, in pertinent part, where an employee, other than a municipal police officer, has been suspended based on a pending criminal complaint or indictment, following disposition of the charges the employee shall receive back pay, benefits and seniority if the employee is found not guilty at trial, the complaint or indictment is dismissed, or the prosecution is terminated.

In the instant matter, the Commission finds that the petitioner's immediate and indefinite suspension on September 21, 2015 was warranted based on the seriousness of the charges. In this regard, the Commission emphasizes that a Sheriff's Officer is a law enforcement officer who, by the very nature of his or her job duties, is held to higher standard of conduct than other public employees. Sheriff's Officers, like municipal Police Officers, hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. *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). The public expects Sheriff's Officer to present a personal background that exhibits respect for the law and rules. Specifically, the petitioner was criminally charged with involvement in a domestic dispute with his wife where she suffered a fractured elbow and a lower back injury. The alleged conduct exhibited is not consistent with that expected of a law enforcement officer who must promote adherence to the law, and the Commission finds that an immediate and indefinite suspension on the basis of the charges was amply justified. However, on November 29, 2016, the weapons count related to the domestic violence case was dismissed and, on June 6, 2017, the petitioner was found not guilty of the aggravated assault count. Therefore, absent subsequent administrative charges brought forth regarding those incidents, under *N.J.A.C.* 4A:2-2.10(c), the petitioner is entitled to back pay from September 21, 2015 until July 12, 2018, the date that the amended PNDA was served for charges concerning the "road rage" incident.

Some other issues need to be addressed. The County contends that due to the County Prosecutor's involvement and the Attorney General Guidelines, it was

prohibited from issuing a PNDA regarding the “road rage” incident until it was directed by the County Prosecutor to do so. Initially, it is noted there was nothing preventing the County from issuing a PNDA after the petitioner was charged with Criminal Mischief on April 1, 2015. Further, although the County explains that it did not initially investigate the matter because it was giving the petitioner “the benefit of the doubt,” it is unclear why it was still affording the petitioner this “benefit” after he was accused of domestic violence in September 2015. Moreover, while the County claims that it was prohibited from issuing a PNDA for the “road rage” incident once the County Prosecutor was involved, it could have issued a PNDA since the record shows that he was initially charged for the “road rage” incident. In this manner, it would have, in essence, treated that incident similar to the manner it proceeded for the domestic violence charges. While it is true that he could not be indefinitely suspended at that time since the initial Criminal Mischief charge was a disorderly persons offense, the County was not prohibited in going forward with administrative charges at that time or any time until the probable cause hearing that apparently spurred on the County Prosecutor’s investigation into the more serious charges later lodged against the petitioner for the “road rage” incident.⁴ At that point, once criminal charges sufficient to impose an indefinite suspension under *N.J.A.C. 4A:2-2.7* were filed for the “road rage” incident, the County could have then imposed such a suspension regardless of the Attorney General Guidelines as those provisions only apply prior to the actual imposition of criminal charges.

The Commission notes that the pending forfeiture proceedings may alter the outcome of this decision. Specifically, in the event that the County is successful in obtaining an order of forfeiture based on the petitioner being found guilty of Criminal Mischief concerning the “road rage” incident, it is within the jurisdiction of the Appellate Division to set an effective date for his forfeiture of employment. If that effective date is set on or before September 21, 2015, the petitioner would not be entitled to any back pay award. Further, if that date is set after September 21, 2015, but before July 12, 2018, the petitioner would be entitled to back pay from September 21, 2015 to the effective date of his forfeiture of employment. Since the back pay award due may be impacted by any action taken by the Appellate Division, the Commission’s award of back pay shall be stayed until final disposition of that matter. *See In the Matter of Joseph Mandi* (MSB, decided June 20, 2007).

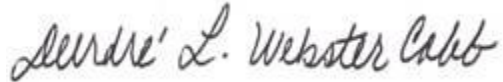
ORDER

Therefore, it is ordered that the petitioner be awarded back pay from September 21, 2015 until July 12, 2018, or through the effective date of his forfeiture of employment if ordered by the Appellate Division, whichever occurs

⁴ The record is actually unclear as to when the County Prosecutor actually began investigating the “road rage” incident which ultimately led to the indictment on May 27, 2016.

first. It is further ordered that the award of back pay be stayed until final disposition of the County's application for forfeiture of employment.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 15th DAY OF AUGUST, 2018



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