



STATE OF NEW JERSEY

In the Matter of Stephan Pitts,
Camden County

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

CSC Docket No. 2023-2880

Request for Interim Relief

ISSUED: September 20, 2023 (SLK)

Stephan Pitts, a Road Repairer 2 with Camden County, represented by Garren Steiner, President CWA Local 1014, petitions the Civil Service Commission (Commission) for interim relief regarding his immediate suspension.

By way of background, on June 7, 2023, Steiner received a letter from the appointing authority indicating that a Preliminary Notice of Disciplinary Action (PNDA) and “Loudermill” for Pitts were enclosed. The letter notes that Pitts was mailed a copy via certified mail. The PNDA provided that Pitts was suspended immediately for various administrative charges as well as violating an internal policy. Additionally, the PNDA described the incidents that gave rise to the charges. Moreover, the PNDA informed Pitts that if he requested a departmental hearing, it would be held on July 25, 2023.

In Pitts’ request, he states that he is seeking this his suspension, effective June 7, 2023, be with pay pending the results of the departmental hearing. He claims that he was never notified that he was being disciplined and subsequently both he and his union were denied an opportunity to read the charges against him at a Loudermill hearing. Thus, Pitts argues that his due process rights were violated. He provides that he made repeated attempts with the Camden County Counsel to have a hearing scheduled, but he has not been given a chance to present his side of the story. Pitts argues that due to the alleged lack of due process, his suspension should be with pay until the departmental hearing. He emphasizes that he is a single parent who cannot

be without income and health insurance, and he contends that the lack of income and health insurance may irreparably damage his family and him.

In response, the appointing authority, represented by Brandon Hawkins, Esq., Assistant County Counsel, presents that Pitts had previously been suspended for insubordination three times, including a written warning 2017, a 10-day suspension which included charges for insubordination, and a PNDA for a 20-day suspension for several charges, including insubordination, for conduct similar to the conduct in this matter. Therefore, based on Pitts' disciplinary history and the current incident, it determined that he should be immediately suspended with pay, and served him the subject PNDA.

The appointing authority states that on June 6, Steiner was contacted to indicate that the union would need to be present for a June 7, Loudermill hearing. Steiner asked who was being suspended, but the appointing authority typically does not provide that information in advance due to safety and other reasons. Thereafter, a State Representative called County Labor Relations, which is unusual, which indicated that the union likely knew that Pitts was the one being suspended. While the State Representative asserted that who was being suspended needed to be made known, the appointing authority provides that this is false, because if Pitts had attended the meeting, he would have been apprised as to why he was immediately suspended. It reiterates that it was prepared to meet with Pitts at 11:00 a.m. on June 7. Moreover, the appointing authority did advise the union at 8:30 a.m. on the morning of the scheduled Loudermill hearing that Pitts was the one being suspended. It contends that it is not credible that the union President did not advise Pitts, who is a union trustee, prior to Pitts walking off the worksite. However, Pitts did not show up at the 11:00 a.m. meeting. It asserts that it had no obligation to provide him with a second opportunity for a hearing. Subsequently, on June 9, the union stated that Pitts left due to an emergency. Moreover, the appointing authority advised that Pitts could respond in writing by the end of the week, but he refused and would only settle for a hearing. The appointing authority highlights that under *N.J.A.C. 4A:2-2.5(b)*, the hearing may be oral or in writing. It notes that the departmental hearing, which was originally scheduled for July 25, 2023, has been rescheduled to August 22, 2023. The appointing authority argues that it followed Civil Service rules, Pitts has not met the standard for interim relief, and if he is ultimately not disciplined, he will receive back pay.

CONCLUSION

N.J.A.C. 4A:2-2.5(a) provides that an employee must be served with a PNDA setting forth the charges and statement of facts supporting the charges (specifications) and afforded the opportunity for a hearing prior to imposition of major discipline.

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 to maintain order of effective direction of public services.

N.J.A.C. 4A:2-2.5(b) provides that where suspension is immediate under (a)1, and is without pay, the employee must first be apprised either orally or in writing, of why an immediate suspension is sought, the charges and general evidence in support of the charges and provided with sufficient opportunity to review the charges and the evidence in order to respond to the charges before a representative of the appointing authority. The response may be oral or in writing, at the discretion of the appointing authority.

N.J.A.C. 4A:2-2.5(d) provides 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.

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.

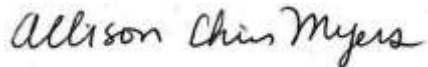
In this matter, Pitts is claiming that he was denied due process by not having a hearing prior to his immediate suspension. However, neither *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), nor *N.J.A.C.* 4A:2-2.5 require such an *in-person* hearing. Instead, the court indicated that the essential requirements of due process are notice and an opportunity to respond. In this matter, Pitts was served with a PNDA which set forth the charges, as well as the evidence. Further, the appointing authority indicates that it provided Pitts an opportunity to respond in writing, which was its discretion, but he refused to do so. Moreover, the record indicates that his departmental hearing was initially scheduled for July 25, 2023, and subsequently rescheduled for August 22, 2023. Further, if the charges are sustained after the departmental hearing, and Pitts receives a major discipline, upon his timely appeal of that action to the Civil Service Commission (Commission), he will be afforded a hearing at the Office of the Administrative Law. While the Commission is cognizant of Pitts' financial situation, the harm that he is suffering while awaiting his hearing is financial in nature, and as such, can be remedied by the granting of back pay should he prevail at the departmental level or subsequently on appeal. Accordingly, Pitts has not established any procedural violations in this matter and, therefore, his petition for interim relief is denied.

ORDER

Therefore, it is ordered that the petition for interim relief 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 20TH DAY OF SEPTEMBER, 2023



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