



STATE OF NEW JERSEY

In the Matter of Kamil Warraich,
Asbury Park Police Department

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

CSC Docket No. 2024-2590

Interim Relief

ISSUED: September 4, 2024

Kamil Warraich, a Police Lieutenant with the Asbury Park Police Department, represented by Zinovia H. Stone, Esq., petitions the Civil Service Commission (Commission) for interim relief regarding his immediate suspension without pay, effective May 24, 2024.

By way of background, on May 24, 2024, the appointing authority presented the petitioner with a Preliminary Notice of Disciplinary Action (PNDA) which set forth the charges and immediately suspended him without pay. The PNDA indicated that the petitioner violated Asbury Park Rule 3:13.5 ("Truthfulness") regarding "various allegations made by Lt. Warraich about a sign which was affixed to a tree ('Tree of Knowledge') behind the Asbury Park Police Department. The sign was affixed to the tree on or about August 1, 2023. Lt. Warraich made various allegations about the sign being racist in correspondence submitted as complaints to the Monmouth County Prosecutor's Office [MCPO], in statements to the Asbury Park Press, and in his Internal [A]ffairs interview."¹ The PNDA further indicated the following charges: insubordination, conduct unbecoming a public employee and other sufficient cause.

In his request for interim relief, the petitioner indicates that since March 2019, he has served as the president of the local FOP; and "he is also of middle-eastern de[s]cent, Muslim, and the highest ranking officer of color within the Department." He explains that "on August 22, 2023, an officer reported to Lt. Warraich that a sign

¹ The PNDA indicated that the "findings are based upon a report issued by the Monmouth County Prosecutor's Office dated May 22, 2024, which is incorporated herein by reference."

was posted to a tree on [Asbury Park Police Department (APPD)] property . . . Lt. Warraich believed, in his opinion that the sign was racist. This opinion was shared by other officers who saw the sign and reported it to him. Lt. Warraich, as a supervisory officer, had a legal obligation to report the sign since four officers had reported it to him.” He further explains that he “made an internal affairs complaint to the Morris [*sic*] County Prosecutor’s Office, and that agency initiated an internal affairs investigation . . . [and] determined that the allegation was not sustained.” He presents that as a result, the MCPO made him the subject of an internal affairs investigation, without notifying him, and “made a finding that Lt. Warraich’s opinion that the sign was racist was somehow untruthful.” The petitioner argues that “pursuant to *Loudermill*, employees are entitled to notice and a pre-termination hearing prior to their property being revoked . . . In the present matter, Lt. Warraich was immediately removed from the payroll without prior notice. Indeed, pursuant to *N.J.A.C. 4A:2-2-5(b)*, the employee must be ‘apprised, either orally or in writing, of why an immediate suspension is being 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 . . .’ Emphasis added.” The petitioner maintains that he was not “afforded with ‘sufficient opportunity’ to review the charges and evidence in support of them . . . This conduct on the part of the Township [*sic*] was a clear violation of *N.J.A.C. 4A:2-2-5* as well as Lt. Warraich’s *Loudermill* rights.” The petitioner also refers to *N.J.S.A. 40A:14-191.1* and *Herzog v. Township of Fairfield*, 349 *N.J. Super.* 602 (App. Div. 2002), for the proposition that “an officer that is accused of dishonesty should not be removed from the payroll unless his alleged conduct is equivalent to ‘the most serious of crimes involving moral turpitude or dishonesty’ and this allegation can be supported.” He argues that even if the allegation is true, *i.e.*, his “opinion that a sign posted on APPD property was racist was untrue,” “it is not a crime, and it can certainly not be compared to the ‘most serious of crimes’ with respect to dishonesty.” He further asserts that “it cannot under any stretch of the imagination be said that the non-criminal allegations at issue here . . . could form the basis for an immediate unpaid suspension pursuant to the provisions of *N.J.A.C. 4A:2-2-5*, as well as paragraphs 5.2.1-3 of the New Jersey Attorney General’s Internal Affairs policies and procedures.” The petitioner refers to *Kim v. N.J. Inst. of Tech.*, Docket No. A-1055-20 (App. Div. June 21, 2023), which he contends provides that all law enforcement officers are entitled to hearings and an opportunity to be heard prior to being sanctioned. This opportunity to be heard should be meaningful. The petitioner contends that “it cannot be said that the City gave Lt. Warraich any meaningful opportunity to be heard as to his suspension without pay.” The petitioner requests “interim relief in the form of back pay dating back to the date of his suspension without pay, immediate restoration to the payroll, declaratory relief that the underlying offense is not serious enough to warrant suspension without pay pending the outcome of the departmental charges, and any other relief the [C]ommission deems equitable and just.”

In response, Asbury Park, represented by John J. Boulton, Esq., explains that around August 1, 2023, Asbury Park Police Officers placed a sign on the “Tree of Knowledge” located behind APPD. Asbury Park indicates that the petitioner “made several allegations that the sign was racist. These complaints were directed to the MCPO, to the Asbury Park Press and to internal affairs.” Subsequently, “the MCPO’s Professional Responsibility Unit conducted an internal affairs investigation . . . [and] concluded that Mr. Warraich’s allegations were unfounded. It also concluded Mr. Warraich’s statements were untruthful . . . As a result of MCPO findings, . . . on May 24, 2024, APPD’S Internal Affairs Unit (‘IAU’) met with [Mr. Warraich] to provide a PNDA, a statement of evidence, and a separate notice about his suspension pending a disciplinary hearing scheduled for June 20, 2024. Both notices were reviewed and signed by Mr. Warraich. After being given an opportunity to review the documents, Mr. Warraich was given time to react and respond to the charges. Despite this opportunity, Mr. Warraich responded to the effect of *it is what it is* and offered no further response. After being provided with this due process rights, he was given another opportunity to respond to the PNDA, which he again declined . . . On the first day of his hearing, June 20, 2024, Mr. Warraich consented to delay the hearing on merits to resolve representation issues.”² Asbury Park maintains that the petitioner’s request fails to meet the criteria pursuant to *N.J.A.C.* 4A:2-1.2(c) and refers to *Crowe v. DeGioia*, 90 *N.J.* 126 (1982). In this regard, Asbury Park contends that the petitioner “cannot show that he will suffer irreparable harm” since “monetary harm, while impactful, does not constitute irreparable harm because it can be compensated through financial means if he ultimately prevails in his case . . . Nor is the claim that his life is on hold persuasive . . . which lacks concrete evidence of substantial harm beyond financial loss.” Asbury Park argues that “given the serious nature of Mr. Warraich’s conduct, his immediate suspension was justified” pursuant to *N.J.S.A.* 11A:2-13 and *N.J.A.C.* 4A:2-2.5(a) and thus, he “fails to establish a clear likelihood of success on the merits.” Asbury Park further argues that the petitioner’s “interpretation of his *Loudermill* rights is not supported by law. *Loudermill*, does not, as Mr. Warraich contends, require a full evidentiary hearing prior to imposition of an unpaid suspension pending hearing. Prior to loss of position or pay, ‘oral or written notice of the charges against him, an explanation of the employer’s evidence, and an opportunity to present his side of the story’ is all that is required.” Asbury Park notes that the petitioner’s reliance on *Herzog*, *supra*, is misplaced as that matter “addressed unpaid suspensions for officers in [a] non-civil service jurisdiction” and the charges did not involve “any claim of dishonesty or moral turpitude.” Asbury Park claims that the charges against the petitioner “center on the finding that statements regarding the Tree of Knowledge . . . sign were wholly untruthful . . . Dishonesty is an exception to the statutory limits imposed on suspensions without pay pending hearing. Nothing presented by Mr. Warraich allows for a different conclusion.” Asbury Park notes that the court “has consistently upheld the principle that police officers are held to higher standards of conduct than other public

² It is noted that Asbury Park provided a copy of the transcript from the hearing held on June 20, 2024 in its submission.

employees due to the nature of their duties . . . [T]he decision to suspend Mr. Warraich without pay is essential to maintaining the integrity and trust critical to the APPD . . . Mr. Warraich's untruthfulness compromises his reliability and undermines public confidence in his capacity to serve as a lieutenant."

In reply,³ the petitioner argues that Asbury Park "concedes that it never gave Lt. Warraich any form of *Loudermill* hearing. Handing Lt. Warraich a two-page PNDA and they suspension notice does not constitute an 'opportunity to be heard' because the City suspended Lt. Warraich prior to allowing him any opportunity whatsoever to respond to the suspension without pay either orally or in writing." He also asserts that "neither of the two-page documents constitute a summary of the evidence against Lt. Warraich because those documents consist of the PNDA itself, a listing of alleged violations, and a boilerplate suspension notice with no mention of the actual evidence against Lt. Warraich." In addition, the petitioner presents that "a bold statement that Lt. Warraich was untruthful does not explain how or why the City (or the [MCPO]) came to that conclusion. As such, the City has failed to abide by its obligations under *Loudermill* and *N.J.A.C. 4A:2-2.5(b)*." The petitioner argues that "the entire basis for Lt. Warraich's suspension without pay is based upon his reporting potential racism within the department and/or the MCPO. Such an opinion, by its very nature, cannot be untruthful . . . To allow the City to remove one of its officers from the payroll and retaliation for reporting racism would not only be contrary to law, it would be an endorsement of its despicable actions in this regard." The petitioner argues that he "did not commit a 'most serious' crime of dishonesty by reporting an instance of racism even if the city and the MCPO disagree with Lt. Warraich's opinion . . ." The petitioner argues that he is "losing more than just money as a result of this suspension without pay . . . [as he] has been stripped of his health benefits via the suspension which has led him to not be able to provide health care for his family. While Lt. Warraich can be reimbursed for any money he has lost, he cannot be reimbursed for the suffering lack of health care will cause to his [family]. As such, the harm being perpetrated upon Lt. Warraich is irreparable."

³ It is noted that subsequent to receipt of the petitioner's initial request, Division of Appeals and Regulatory (DARA) staff sent a letter dated July 12, 2024 to the parties indicating, in part, that the parties could submit additional information no later than July 17, 2024. On July 17, 2024, Asbury Park submitted the above noted response. On July 23, 2024, the petitioner requested an extension to file his reply by July 26, 2024. Asbury Park objected to this extension given that the July 12, 2024 letter provided for a July 17 deadline. By email sent on July 24, 2024, DARA staff informed the parties that the July 17, 2024 deadline was not statutorily based and there was no regulatory or statutory provision to prohibit a reply in this matter. The parties were also informed that in order for the Commission to make a reasoned decision in a matter, it must review a complete record. *See e.g., In the Matter of James Burke* (MSB, decided June 22, 2005). Moreover, the appointing authority would have the opportunity to reply to the petitioner's submission. Thus, there was no basis to deny the petitioner's request for an extension to July 26, 2024. The parties were further informed that if the appointing authority wished to supplement the record with any additional information, it could do so within five days of the petitioner's submission, at which time the record would close and no further information would be accepted.

In further response, Asbury Park presents that “Mr. Warraich’s newest claim of irreparable harm is again predicated on monetary damages, which was not raised in his initial petition . . . [His] allegation pertaining to health benefits is not persuasive, is not supported by evidence, and can be remedied by monetary damages. This ‘harm’ is not certain, imminent, or irreparable. The only ‘harm’ offered is monetary in nature and therefore does not satisfy the *Crowe* requirement . . . Nothing prohibits Mr. Warraich from seeking medical care and treatment . . . The financial impact of obtaining new coverage or paying out-of-pocket expenses can be compensated through monetary damages . . . Additionally, Mr. Warraich’s claim that ‘he cannot be reimbursed for the suffering lack of healthcare will cause to his [family]’ is speculative and not immediate.” Asbury Park maintains that the petitioner misinterprets *N.J.A.C. 4A:2-2.5(b)* and that his allegation that it “concedes that it never gave Lt. Warraich any form of *Loudermill* hearing” is also incorrect. In this regard, Asbury Park emphasizes that the petitioner “was apprised in writing of why an immediate suspension was sought, with the charges and general evidence in support of the charges and provided him with an opportunity to respond to the charges in accordance with *N.J.A.C. 4A:2-2.5(b)*.” Asbury Park emphasizes that “*Loudermill* does not, as Mr. Warraich contends, require a full evidentiary hearing prior to imposition of an unpaid suspension pending hearing. Notice and opportunity to be heard does not require full discovery.” It notes that the petitioner “does not address *N.J.S.A. 11A:2-13* and *N.J.A.C. 4A:2-2.5(a)* in his reply” and he “fails to address or dispute that his immediate suspension is necessary to maintain safety, health, order or effective direction of public services.” Asbury Park further emphasizes that the petitioner’s “reliance on *N.J.S.A. 40A:14-149* and *Herzog*, are again, misplaced. Contrary to [the petitioner’s] assertions, *N.J.S.A. 40A:14-149.1* does not require that ‘the ‘dishonesty’ alleged be a high-level crime or akin to a high-level crime.’” Finally, Asbury Park presents that the petitioner’s reply “does not address protecting the public interest nor the balancing of the equities . . . Here, the decision to suspend Mr. Warraich without pay due to his dishonesty is essential to maintaining the integrity and trust critical to the APPD . . . Mr. Warraich’s untruthfulness compromises his reliability and undermines public confidence in his capacity to serve as a lieutenant. Allowing Mr. Warraich to remain on the payroll, despite his dishonesty, would send a chilling message to other officers and the public suggesting that dishonest behavior is acceptable within the APPD . . . Therefore, granting interim relief is not in the public interest.”

In further reply,⁴ the petitioner argues that the Commission “has, on countless occasions, held that the fact that an appointing authority is causing only monetary

⁴ It is noted that the above indicated further response from Asbury Park was received on July 31, 2024. The petitioner submitted the indicated further reply on the same day. Asbury Park objected to the petitioner’s “supplemental correspondence” and maintained that it “should be disregarded in its entirety, as it is procedurally improper.” By email on August 1, 2024, DARA staff informed the parties

damages does not absolve that entity from its legal obligation to abide by the mandates of *Loudermill* and *N.J.A.C. 4A:2-2.5(b)*. See *In the Matter of [Jesse] O'Brien*, [*Jersey City* (CSC, decided May 24, 2023)].⁵ Since the City has not even bothered to dispute the numerous blatant violations of this State's law and jurisprudence that it has committed, the Commission should order that it restore Lt. Warraich to the payroll with full back pay." With regard to healthcare, the petitioner maintains that "it is axiomatic that a parent with no financial income cannot afford services such as COBRA . . . It is also an unfortunate truth that parents without income and without healthcare have difficult decisions to make about whether a child's injury or illness is emergent. In addition, Lt. Warraich's access to medications that he needs on a daily basis have been interrupted. The long-term effects of foregoing these medications cannot be compensated or corrected by monetary relief . . . [N]o amount of monetary damages will compensate Lt. Warraich for the anguish that he is suffering as a result of the City's actions. No amount of monetary damages with compensated Lt. Warraich's [family] for the stress that they have suffered and continue to suffer." The petitioner maintains that his reputation "has been severely tarnished" and refers to articles published by the Asbury Park Press which are "illustrative of the self-serving nature of the MCPO and City investigators." The petitioner further asserts that with respect to "the City's renewed claims that it did give Lt. Warraich an opportunity to be heard prior to being suspended without pay, [its] position on this is untenable." In this regard, the petitioner argues that Asbury Park did not provide him with sufficient opportunity to review the evidence and respond to the basis for the suspension without pay prior to being suspended without pay pursuant to *N.J.A.C. 4A:2-2.5(b)* and *Loudermill*. Specifically, he contends that "the City did not give Lt. Warraich any such opportunity, and while it was not required to provide all of the evidence against Lt. Warraich, it did not provide any evidence. Instead of proving Lt. Warraich with the discovery he is owed, the opportunity to be heard under *Loudermill*, and a hearing as to the charges themselves, the City has delayed the proceedings via a frivolous motion to disqualify Lt. Warraich's chosen counsel . . ." The petitioner further contends that "the City chose an allegation of 'dishonesty' so that it could latch onto the exception within

that Asbury Park's objection to the petitioner's July 31 submission would be noted. As discussed previously, in order for the Commission to make a reasoned decision in a matter, it must review a complete record. See e.g., *In the Matter of James Burke*, *supra*. Accordingly, it will be considered herein.

⁵ It is not clear why the petitioner is referring to this matter in this context. In *In the Matter of Jesse O'Brien*, *supra*, after a departmental hearing, O'Brien was served with four separate Final Notices of Disciplinary Action (FNDA), removing him, on charges. He appealed his removals to the Commission and the matters were transmitted to the Office of Administrative Law (OAL) as contested cases. In his request for interim relief, O'Brien argued that the departmental hearing was cut off and he was not provided with the opportunity to fully cross-examine witnesses or present his own witnesses or any evidence. He argued that his right to a hearing under Civil Service law and rules was violated. The Commission noted, in part, that procedural defects which occur at the departmental or municipal level that are not substantially prejudicial to the employee are, in essence, cured by the granting of a *de novo* hearing at the OAL.

N.J.S.A. 40A:14-149 to remove Lt. Warraich from the payroll as a means to compel Lt. Warraich to accept its terms under financial duress.” The petitioner maintains that *Herzog, supra*, is relevant in the instant matter and “the City’s attempt to draw a distinction between civil service and non-civil service jurisdictions is improper.”

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, except:

- (1) 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 hearing must be served in person or by certified mail within five days following the immediate suspension. [*See also, N.J.S.A.* 11A:2-13].

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.

Initially, it must be emphasized that the role of the Commission at this stage in the proceedings is not to adjudicate the merits of the charges against the petitioner. Rather, the sole issue before the Commission at this juncture is whether the appointing authority presented a valid basis to immediately suspend the petitioner pursuant to *N.J.S.A.* 11A:2-13 and *N.J.A.C.* 4A:2-2.5(a)1, which provide 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. The appointing authority in this matter validly imposed an immediate suspension, pursuant to *N.J.S.A. 11A:2-13* and *N.J.A.C. 4A:2-2.5(a)1*, to maintain order and the effective direction of public services. In this regard, the information and arguments provided in support of the instant petition do not demonstrate a clear likelihood of success on the merits. A critical issue in any disciplinary appeal is whether or not the petitioner has actually committed the alleged infractions. In the instant matter, the Commission notes that the charges against the petitioner involve serious allegations regarding untruthfulness and conduct unbecoming a public employee. Based on the circumstances involved in the petitioner's alleged conduct, it would be potentially harmful to the appointing authority, as well as the public at large, to allow a supervisory law enforcement officer facing such serious disciplinary charges to be returned to employment without the benefit of a departmental hearing, and ultimately, if necessary, a *de novo* hearing at the OAL. Moreover, the public is best served when a law enforcement employee facing such serious charges is kept out of the workplace pending adjudication of the charges. Clearly, the charges alleged, if true, would certainly affect the petitioner's ability to successfully perform his supervisory duties, as well as impact his credibility and authority. The Commission further notes that while it sympathizes with his financial situation, the harm that the petitioner is experiencing 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.

Regarding the petitioner's claim that he was denied due process by not having a hearing prior to his immediate suspension, it is noted that neither *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), nor *N.J.A.C. 4A:2-2.5* require an in-person hearing. As noted above, *N.J.A.C. 4A:2-2.5(b)* provides, in pertinent part, that when an employee is suspended immediately and without pay, the employee must be apprised orally or in writing of why the suspension is sought, the charges and general evidence in support of the charges, and provided sufficient opportunity to review the charges and 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. In a prior case addressing this issue, *In the Matter of Anthony Recine* (MSB, decided March 10, 1998), it was found that the Township of Hamilton did not provide a proper pretermination hearing since Recine was not made aware of the charges and the general evidence in support of the charges at the time of his suspension. By contrast, in the present matter, Warraich received written charges against him and general evidence in support of the charges at the time of his suspension. Specifically, Warraich was served with a PNDA at the time he was immediately suspended which set forth the charges and specifications for the charges. It is noted that the specification portion of the PNDA constitutes the general evidence

in support of the charges. Further, the appointing authority indicates that it provided Warraich with an opportunity to respond in writing, which was its discretion. In addition, the PNDA was served within the proper timeframe and thus, no procedural violations occurred. Moreover, the record indicates that his full departmental hearing was initially scheduled for June 20, 2024, but at the hearing, both parties agreed to delay the hearing in order to resolve representation issues. As such, the record reflects that Asbury Park complied with the requirements of *Loudermill*, *supra*, and *N.J.A.C. 4A:2-2.5(b)*. Accordingly, the petitioner's request for interim relief is denied.

ORDER

Therefore, it is ordered that this 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 4TH DAY OF SEPTEMBER, 2024

Dolores Gorczyca

Dolores Gorczyca
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