

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

Reconsideration

By way of background, on September 26, 2024, the petitioners, who are Newark Police Officers, and Newark, executed Settlement Agreements where the petitioners' disciplinary appeals would be withdrawn in exchange for a reduction of their suspensions. On October 28, 2024, the Office of Administrative Law issued an Initial Decision recommending that the agreements be approved and incorporating their terms into the decision. Thereafter, the Initial Decision was filed with the Commission for consideration. On November 12, 2024, the Director, Division of Appeals and Regulatory Affairs, requested responses from the parties regarding how to treat the gaps in time between the original and amended suspensions under the agreements. The Director gave two options, either the gaps would be treated as leaves of absences without pay or the petitioners would be awarded back pay. On November 18, 2024, the appointing authority advised that the terms of the agreements should be interpreted as treating the gaps in time as leaves of absences

without pay and requested that the petitioners confirm the same. On November 25, 2025, the Director requested that counsel for the petitioners respond by November 27, 2024, regarding their position on how to treat the gaps in time. Further, the Director advised that if no response was received prior to the deadline, the Commission would assume that counsel for the petitioners agreed with the appointing authority's position and the gaps in time would be treated as leaves of absences without pay. Thereafter, on that same date, counsel for petitioners sent two emails. The first advising that they would "circle back" later that day and the second stating, "We are fine with that...we agree."

On November 27, 2024, the Commission issued its final decision acknowledging the settlements as indicated in the Initial Decision and incorporating the email correspondence between the two parties whereby the parties agreed the gaps in time between the original and amended suspensions would be treated as leaves of absences without pay.

In their requests for reconsideration, the petitioners present that although their settlement agreements do not specifically address the issue, the parties agreed that Pagan was entitled to 40 days back pay and Torres was entitled to 120 days back pay. The petitioners indicate that emails were exchanged in November 2024 regarding the back pay issue, and the petitioners' counsel explains that he mistakenly agreed with the Director's proposition that the gaps between the original suspensions and modified/reduced suspensions should be treated as leaves of absences without pay. Instead, the petitioners assert that they should be awarded back pay for the unpaid suspension periods they served which were reduced. The petitioners emphasize that the reductions in unpaid suspensions were the result of freely agreed upon settlement negotiations and the petitioners were available and able to work during the entirety of their suspension periods. Consequently, the petitioners request that these matters be re-opened and re-submitted to the Commission for acknowledgment with the understanding that each petitioner is entitled to back pay for the periods of unpaid suspension served as agreed upon by the parties.

In response, the appointing authority, represented by Ashley E. Morgan, Esq., assert that the petitioners fail to meet the standard for reconsideration as they have not demonstrated any Commission error or new information that would alter the Commission's decision. It states that there is no Civil Service rule that provides that a matter can be re-opened and re-transmitted to the Office of Administrative Law after the Commission has issued a final decision. Therefore, the petitioners only recourse is to file for reconsideration or appeal to the Appellate Division.

The appointing authority emphasizes that the petitioners do not allege that the Commission made an error or present new evidence that would change the outcome of the case. Rather, the petitioners' counsel indicates that he made a "mistake" when he stated that the petitioners agreed that the gaps in time between

the original and modified suspensions should be treated as leaves of absences without pay. The appointing authority notes that the petitioners have not provided any evidence that their agreement was a mistake. The appointing authority highlights that the Courts favor settlement and the petitioners' counsel's emails clearly indicate that the petitioners agreed to treat the gaps in time as leaves of absences without pay. The appointing authority provides that the petitioners were not rushed into this decision as there were 13 days between the time the Director contacted the parties as how the gaps were to be treated and their responses. The appointing authority asserts that it is reasonable that the petitioners would agree to this arrangement because the reductions in their suspension will benefit them with regards to future employment opportunities. Therefore, the appointing authority argues that the petitioners cannot demonstrate that their agreement was so unconscionable to warrant rescission.

Additionally, the appointing authority argues that even if the petitioners are not procedurally barred from requesting that the hearing be re-opened, they fail to demonstrate special circumstances warranting that the decision be rescinded. It presents that a final judgment may be re-opened when there is newly discovered evidence which would probably alter the judgment and due diligence could not have discovered it previously. The appointing authority reiterates that this is not the case here as the petitioners' agreement to treat the gaps in time as absences without pay was straightforward and unambiguous.

## CONCLUSION

*N.J.A.C. 4A:2-1.6(b)* sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred, or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

In this matter, the petitioners have not met the standard for reconsideration. A review of each of the agreements indicate that:

Appellant releases and gives up any and all claims and rights that he has or may have against the City, or any of its officials, officers, representatives or employees, including, but not limited to, any claim of liability, damages or attorneys' fees. This release includes all claims, including those of which Appellant is not aware and those not mentioned in this Agreement. This agreement and this release apply to all claims resulting from anything that has occurred through the date of execution of this Agreement.

Thereafter, the Director communicated to the parties that:

[T]he settlements do not specifically indicate how to treat the gap in time between the originally served suspensions and the modified suspensions. As all portions of an employee's record must be specifically accounted for, how those time periods are recorded must be indicated. In this regard, given that the settlements indicate that no "damages," such as back pay, will be issued, it may be reasonably assumed those periods of time will be considered leaves of absence without pay.

If the parties agree to the above, please respond to all on this email indicating such as soon as possible. If such agreement is received, I will ensure that it is included with the settlement to be presented to the Commission for acknowledgment. Otherwise, if there is some different agreed upon disposition of the time in question, please let me know and it will be included with the settlement.

Subsequently, the petitioners' counsel first replied, "We will circle back later today." Then, later that same day, the petitioners' counsel replied, "We are fine with that.....we agree."

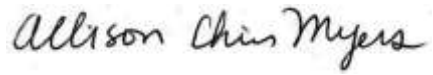
In other words, the parties entered into agreements where, importantly, the best reading of the agreements prior to clarification was that as part of the settlements, the petitioners gave up their right to back pay via the above quoted release/waiver. However, to ensure that there was no error, the Director gave the parties an opportunity to clarify the agreement as to whether the petitioners were still seeking back pay. The petitioners' counsel responded confirming the petitioners' agreement that the gaps in question should be treated as leaves of absences without pay. Therefore, the record indicates that the Commission did not err in its acknowledgment of the settlement which was clarified indicating that the petitioners were not seeking back pay nor is there any new evidence that was not available at the time of the Commission's acknowledgement, which is now available, which would have altered the Commission's decision to acknowledge the clarified agreements. In this regard and under these circumstances, there is no basis to grant reconsideration or re-open these matters because the petitioners' counsel now claims that he made a mistake.

### **ORDER**

Therefore, the Civil Service Commission orders that these requests 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 26<sup>TH</sup> DAY OF FEBRUARY, 2025



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