STATE OF NEW JERSEY

In the Matter of Daniel Burke, Jackson, Department of Administration	:	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**
CSC Docket No. 2025-2562	:	Request for Back Pay, Benefits, and Counsel Fees

ISSUED: November 26, 2025 **(HS)**

Daniel Burke, a former Municipal Engineer with Jackson, Department of Administration, represented by F. Kevin Lynch, Esq., requests back pay, benefits, and counsel fees in accordance with *In the Matter of Daniel Burke, Jackson, Department of Administration* (CSC, decided March 19, 2025).[1]

As background, the appointing authority laid the petitioner off, effective August 30, 2019. Upon his appeal, the matter was transmitted to the Office of Administrative Law (OAL) for a hearing. Following a hearing before an Administrative Law Judge (ALJ), the ALJ issued a consolidated initial decision. In this regard, it is noted that this matter was a consolidated case with the Public Employment Relations Commission (PERC), where it had the predominant interest. PERC determined that the layoff was motivated by anti-union animus and intended to interfere with protected union activity in violation of the New Jersey Employer-Employee Relations Act (EERA). Following its review, the Civil Service Commission (Commission) found that the layoff was not substantially effected for the purposes of economy or efficiency and reversed the layoff. The Commission ordered that the petitioner be awarded mitigated back pay, benefits, and seniority for the period after the imposition of the improper layoff through the date of his actual reinstatement and reasonable counsel fees. The record reflects that the petitioner retired, effective May 1, 2023, and later declined reinstatement with the appointing authority.

[1] The issue date for the decision is March 20, 2025.

However, the parties were unable to agree on the amount of back pay, benefits, or counsel fees due to the petitioner, and the petitioner requested Commission review.

In his request, the petitioner claims that he had also been unlawfully removed from certain "stipend positions." The petitioner indicates that from August 31, 2019 through December 1, 2019, he received $9,048.00 in unemployment benefits. He relates that upon learning of his layoff, he applied for a position with Hoboken's Water System Department; an engineering position with the Ocean County Utility Authority; an engineering position with the New Jersey American Water Company; an engineering/utility position with the U.S. Navy; a position with FEMA's reservist program; and the position of Municipal Engineer with New Brunswick, which he obtained and commenced on December 2, 2019 before retiring, effective May 1, 2023. Through his employment with New Brunswick, the petitioner earned $502,665.24.

On benefits, the petitioner indicates that he spent $4,881.30 on health insurance premiums through COBRA during the time he was unemployed and before health benefits were available with New Brunswick. He also insists that he is entitled to accrued vacation and sick time.

The petitioner adds that as a member of the Public Employees' Retirement System (PERS), he also incurred economic loss due to his three months of unemployment in that he suffered a permanent monthly reduction in pension benefit of $60.83. Additionally, the petitioner states that he also ended up incurring a significant amount in additional work-related expenses, which include an extended commute in both mileage and time. He argues that the overall economic calculations should take into account his additional out-of-pocket costs.

As for counsel fees, Mr. Lynch states that the "fee arrangement . . . was contingent upon prevailing and being awarded reasonable [counsel] fees." The appointing authority, in his view, will be hard-pressed to justify its position that the fees requested are unreasonable, especially given the amounts its law firm charged its client, and got paid, for similar tasks, some of which are listed as taking more time than what petitioner's counsel entries reflect. Mr. Lynch explains that he has had a professional relationship with the petitioner since January 2021, when he consulted counsel on the recommendation of a colleague of petitioner who had favorable outcomes. Counsel and petitioner have worked closely throughout their relationship, with counsel advising the petitioner as to his legal rights, collaborating on the pertinent facts, preparing and assembling the document production, and counsel conducting the hearing. This required counsel to commit considerable time and resources and establish a trusting relationship. Mr. Lynch further states:

> Many lawyers would not even have considered taking on this case or cases like this one, because of the time demands, the risks inherent in taking cases on contingency, the low hourly rate afforded attorneys in

> these types of cases, and the deferral of payment inherent in contingent cases.

Mr. Lynch provides a Certification of Time reflecting a request for $29,480.00 in counsel fees (147.4 hours x $200.00). Mildred Vallerini Spiller, Esq., co-counsel, provides a Certification of Time reflecting a request for $59,860.00 in counsel fees (299.3 hours x $200.00). Thus, the petitioner seeks a total of $89,340.00 in counsel fees for 446.7 hours of work. The petitioner also seeks reimbursement for the cost of transcripts in the OAL proceeding in the amount of $2,241.31.

In response, the appointing authority, represented by Kyle J. Trent, Esq., maintains that although the petitioner refers to compensation he received for "stipend positions," such stipend positions ended in 2015 and were beyond the scope of these proceedings. Receipt of compensation for one or more stipend positions he worked separate from his salary as Municipal Engineer are not subject to reimbursement under *N.J.A.C.* 4A:2-2.10, particularly as the Commission did not (and could not) order his reinstatement to such positions. The appointing authority indicates that had the petitioner remained employed with it until his retirement in 2023, he would have earned $483,418.33 as a Municipal Engineer, but the petitioner fully mitigated these losses through his $511,713.24 in earnings from unemployment benefits and employment with New Brunswick. Further, as he chose to retire from a position that fully mitigated his lost wages in 2023 and later declined reinstatement, he demonstrated that he was no longer interested in and failed to make reasonable efforts to find suitable alternative employment. Thus, per the appointing authority, the petitioner is not entitled to any back pay.

As for benefits, the appointing authority agrees that the petitioner is entitled to a reimbursement of $4,881.30 for his out-of-pocket health insurance premiums. However, the appointing authority contends that as the petitioner declined reinstatement, his request for any additional leave time is moot. Further, he has not established any statutory or contractual right to payout for accrued sick or vacation leave in these circumstances where he has declined reinstatement.

On counsel fees, the appointing authority argues that the procedural history in this matter demonstrates that it was repeatedly delayed, and excessive unnecessary work was required due to counsel's disregard of the orders issued by the ALJ "to make this proceeding more efficient and also to protect the interests of both parties." On multiple occasions, the ALJ chastised counsel for delaying the resolution of this matter and creating additional unnecessary work. Specifically, the appointing authority highlights the following passages from the ALJ's recitation of the procedural history in her initial decision:

> On March 22, 2023, the second amended prehearing order was issued with specific dates for the completion of discovery, specific instructions

> regarding the marking, exchange, and submission of exhibits, and scheduling the hearing for June 26, 28 and 29, 2023 . . . [The petitioner] filed his exhibits after the close of business on June 23, 2023, in violation of the deadlines in the prehearing order and in the applicable regulations, and without complying with the instructions in the prehearing order regarding the organization of exhibits. At the beginning of the hearing on June 26, 2023, [the petitioner's] counsel offered an explanation and requested an adjournment to correct such deficiencies. This request was denied.
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> During the hearing on June 28, 2023, [the petitioner] moved to admit certain documents into evidence that were not included in his evidence binder and therefore as to which [the appointing authority] had no prior notice. After a brief recess, [the appointing authority] moved to bar all documentary evidence not marked, exchanged with counsel, and/or submitted to [the ALJ] on or before the [20th] day before the hearing. Both parties were heard, and [the ALJ] ruled that, despite [petitioner's] counsel's failure to comply with [her] explicit order and the applicable regulations, a bar of all such documentary evidence was not warranted, but, in the interest of fairness, the proceedings were adjourned, and counsel was given [30] days to resubmit all exhibits, properly organized and marked, and to provide a hard copy of such exhibits to his adversary. A letter detailing these instructions was sent to the parties on July 5, 2023.
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> On July 28, 2023, [the petitioner] submitted two large binders with exhibits marked A-1 through A-171, far more documents than had been included in his pre-hearing submission. The new documents (other than those specifically requested) were not permitted, and counsel was directed to revise its July 28, 2023 submission.
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> The hearing was rescheduled and resumed on October 5, 2023. [Petitioner] moved for reconsideration of [the ALJ's] ruling limiting documents; following arguments by both parties, [the ALJ] directed the parties to—as had been requested multiple times—collaborate on joint stipulations of non-disputed facts and joint exhibits, particularly of public documents. A review of stipulations previously proposed by both parties was conducted on the record, and the parties were directed to complete these submissions by December 8, 2023.

Additionally, the appointing authority complains that the petitioner repeatedly utilized two attorneys unnecessarily to participate in hearings, phone conferences, and other activities that should have been performed by a single

competent attorney. He also submitted vague entries[2] that make it impossible to determine whether the services were reasonably expended in the furtherance of the Civil Service appeal, or his separate simultaneously filed Superior Court litigation. The appointing authority further maintains that some of the entries make clear that the work was being performed related to his Superior Court litigation and is not subject to a counsel fees award from the Commission. Similarly, there was no award of counsel fees related to the PERC matter as unfair labor practice charges are not fee shifting. As such, in these circumstances and on this record, the petitioner's request for counsel fees must be reduced by at least 177.1 hours, and the Commission must further reduce any remaining bills by at least 50% given the ALJ's specific determinations about counsel's unreasonable conduct including that "[c]ounsel has failed to comply with very specific instructions meant to make this proceeding more efficient and also to protect the interests of both parties," which unreasonably inflated the cost of this litigation.

In reply, the petitioner argues that the appointing authority has exaggerated the issue of the ALJ's procedural rulings. The petitioner acknowledges that the ALJ, as judges commonly do, was firm in her displeasure of how trial documents were initially presented, "although she did recognize that the issues were due in large part to personal issues . . . with . . . office help." He also insists that attorneys should not be criticized for wanting to create a complete record, even if there were some technical glitches along the way, which happens in many cases that go to a hearing or are tried. He urges that the ALJ's discussion of trial binder issues took up only a "minuscule" portion of the entire record, yet the appointing authority focuses on it as if it was something that "permeated" every aspect of the case. The petitioner contends that the appointing authority uses terms like "chastised" to describe the ALJ when speaking about the trial exhibits but fails to acknowledge that it was "chastised" for various things throughout the process (including failing to stipulate to certain facts and to the admission of public documents), which delayed matters. The petitioner states that, notwithstanding any of his actions, Mr. Trent and other attorneys in his firm were paid approximately the same amount of counsel fees as petitioner in full.

The petitioner maintains that billing entries such as "miscellaneous research, telephone conversations, and conferences concerning facts, evidence, and witnesses" are sufficiently specific. *Giedgowd v. Cafaro Grp., LLC*, 2021 U.S. Dist. LEXIS 205882 (E.D. Pa. Oct. 21, 2021). Generally, internal discussions between counsel and his or her legal staff regarding the case can be properly charged to one's client and are therefore recoverable. It is reasonable to expect multiple attorneys to bill for conferences in which they necessarily took part. *Shane T. v. Carbondale Area Sch. Dist.*, 2021 U.S. Dist. LEXIS 188850 (M.D. Pa. Sept. 30, 2021). Moreover, the petitioner emphasizes, it must be remembered that attorney-client conversations are protected *by the attorney-client privilege*. The petitioner maintains that it is

[2] For example, the appointing authority considers vague entries that state that a telephone conference with the client occurred.

noteworthy that the appointing authority did not fulfill an Open Public Records Act (OPRA) request for its attorney invoices for many months and charged an exorbitant fee to obtain those invoices on the grounds that the bills had to be redacted on privilege/confidentiality grounds. Confidential communications between a client and his attorney in the course of a professional relationship are privileged. *N.J.S.A.* 2A:84A-20; *N.J.R.E.* 504. The privilege is not restricted to legal advice. *Rivard v. Am. Home Prods., Inc.*, 391 *N.J. Super.* 129, 154 (App. Div. 2007).

The petitioner contends that much of the appointing authority's opposition conveniently ignores attorney-client privilege. Conferences and conversations with a client are confidential. The records for the Superior Court litigation were separate. Objections about two attorneys not being allowed to bill for conferring, strategizing, and working on things together – as attorneys regularly do in all types of scenarios – is unfair and disingenuous, especially given the invoices by the appointing authority where several attorneys other than Mr. Trent billed on the case and where the entries for Mr. Trent (as one attorney) contain similar billables to the appointing authority than that of the petitioner's two attorneys' hours combined in this case. In this regard, the petitioner points out that from what was provided in the OPRA request, Mr. Trent's firm billed and received payment for approximately $81,188.00 for work performed in this case while he argues that the fees for the services of the attorneys who prevailed against him every significant step of the way should be limited to a total of $26,960, *i.e.*, the total amount requested minus the billables complained of being reduced by 50%, a reduction for which no legal authority is offered.

The petitioner proffers, regarding the "vagueness" arguments, that these fail to consider attorney-client privilege. The reason for conferences and conversations between the client and his attorneys should not have to be revealed. Obviously, during ongoing litigation, there are going to be ongoing communications between attorneys and their client. Additionally, the appointing authority's complaints about reviewing the unfair labor practice charge and work pertaining to PERC fail to take into account that the cases were consolidated, not at the request of petitioner, and thus the work performed necessarily rolled into the administrative hearing and was in any case relevant as to the history of the case culminating in the layoff.

The petitioner adds that the time that had to be spent replying to the appointing authority's response and having to comb the record for the citations to dispute the falsehoods should be included in an award of fees. Thus, he requests an additional $2,800.00 in counsel fees for 14 additional hours. In support, the petitioner submits the certification of Ms. Spiller where she certifies, among other things:

> 3. I make this Certification in Reply to [the appointing authority]'s opposition to [petitioner]'s requests for backpay, benefits and [counsel] fees.

. . .

7. In preparing to file a Reply in this case, I had to review the [appointing authority's] 40-page letter brief and the voluminous exhibits in addition to reviewing case law cited and undertaking legal research on some of the issues. Additionally, I had to review the transcripts, discovery provided and go back through years of emails to set the record straight. Conservatively, the time spent was 14 hours, for an additional $2,800 in billing. This does not consider any of the time Mr. Lynch spent on different aspects of the Reply.

8. With respect to some of the specific complaints about billing entries, nothing entered and submitted to the [Commission] related to the Superior Court case and I have separate records for each of the cases. The cases involved different causes of action and the tasks in the Superior Court were separate from the OAL case.

9. There were multiple phone conferences and meetings with [the petitioner] and the entries in the OAL case were for issues pertaining to the OAL case.

10. Any legal research entries were for the OAL case.

. . .

17. Additionally, Exhibit 3 is to the best of my knowledge a true and accurate copy of Exhibit A-52 ["July 23, 2019 letter to Wall from Rasiewicz re accrued sick and personal time"].

18. Additionally, Exhibit 4 is to the best of my knowledge a true and copy of Exhibit A-53 ["July 26, 2019 memo to Rasiewicz from Wall re Lay off and sick and personal day payments"].

19. Additionally, Exhibit 5 is to the best of my knowledge a true and accurate copy of Exhibit A-64 ["August 29, 2019 emails re agreement of sick time pay"].

In reply, the appointing authority contends that the petitioner has now confirmed that he and his attorneys did not have a fee arrangement providing for payment at an hourly rate for his Civil Service appeal and that they instead worked on a contingency fee basis apparently related to his Superior Court litigation. To support this proposition, the appointing authority cites the petitioner's statements that "[the appointing authority] seems to have no understanding that fee shifting statutes take into account the hardships due to delayed payment of counsel fees and

the fact that costs and expenses are not deferred while litigating a case" and that "[i]nstead of acquiescing to [the appointing authority]'s unreasonable request for a reduction of [counsel fees], the amounts should be enhanced." In doing so, the petitioner conflates principles applicable to the New Jersey Law Against Discrimination and similar statutes (the law the petitioner brought his Superior Court litigation under) where attorneys may receive enhanced fees when they are paid on a contingency fee basis. But those principles are not applicable to reimbursement of counsel fees incurred under *N.J.A.C.* 4A:2-2.12. Relying on *In the Matter of Richard Holland*, Docket No. A-1318-09T2 (App. Div. November 29, 2010), the appointing authority now requests that counsel fees be denied in their entirety.

In reply, the petitioner states he is "truly flummoxed" at much of the content of the appointing authority's reply. He asserts that he does not know how the appointing authority can leap to the false conclusion that the counsel fees sought herein should be rolled into the pending Superior Court litigation. With respect to the Superior Court litigation and OAL case, the petitioner repeats that the two cases were and are separate and apart, involving different issues and different tasks. Both cases, however, involve fee shifting statutes, one under the New Jersey Law Against Discrimination, which allows for substantially more in terms of hourly rate, and one under the Civil Service good faith layoff statute, which is regulated to limit the allowable hourly fees. The petitioner urges that simply because fee shifting statutes are at play does not make the two cases part of one arrangement.

CONCLUSION

At the outset, the Commission affirms that this decision pertains only to the petitioner's Municipal Engineer position. The Commission, in the prior decision, did not provide relief with respect to any "stipend positions." As such, those "stipend positions" are outside the scope of this decision, and nothing in this decision should be construed as providing any relief with respect to such "stipend positions."

Back Pay

Pursuant to *N.J.A.C.* 4A:2-2.10(d), an award of back pay shall include unpaid salary, including regular wages, overlap shift time, increments and across-the-board adjustments. *N.J.A.C.* 4A:2-2.10(d)3 provides that an award of back pay shall be reduced by the amount of money that was actually earned during the period of separation, including any unemployment insurance benefits received, subject to any applicable limitations set forth in (d)4. Further, *N.J.A.C.* 4A:2-2.10(d)4 states that where a removal or a suspension for more than 30 working days has been reversed or modified and the employee has been unemployed or underemployed for all or a part of the period of separation, and the employee has failed to make reasonable efforts to find suitable employment during the period of separation, the employee shall not be eligible for back pay for any period during which the employee failed to make such

reasonable efforts. "Reasonable efforts" may include, but not be limited to, reviewing classified advertisements in newspapers or trade publications; reviewing Internet or on-line job listings or services; applying for suitable positions; attending job fairs; visiting employment agencies; networking with other people; and distributing resumes. The determination as to whether the employee has made reasonable efforts to find suitable employment shall be based upon the totality of the circumstances, including, but not limited to, the nature of the disciplinary action taken against the employee; the nature of the employee's public employment; the employee's skills, education, and experience; the job market; the existence of advertised, suitable employment opportunities; the manner in which the type of employment involved is commonly sought; and any other circumstances deemed relevant based upon the particular facts of the matter. The burden of proof shall be on the employer to establish that the employee has not made reasonable efforts to find suitable employment. *See N.J.A.C.* 4A:2-2.10(d)4, *et seq*.

It is noted that the petitioner made reasonable efforts to find suitable employment during the period between his layoff and commencement of employment with New Brunswick. Specifically, he applied for several positions including one – the New Brunswick position – that he successfully obtained. Moreover, the petitioner received unemployment benefits in this period. There is a presumption that the receipt of unemployment benefits evidences that an employee sufficiently mitigated during the period of separation since searching for employment is a condition to receiving such benefits. *N.J.S.A.* 43:21-4(c)1 states that "an unemployed individual shall be eligible to receive [unemployment] benefits with respect to any week only if . . . [t]he individual is able to work, and is available for work, and has demonstrated to be actively seeking work." The record reflects that had the petitioner remained employed with the appointing authority until his retirement in 2023, he would have earned $483,418.33. However, the petitioner fully mitigated this unpaid salary through his $511,713.24 in earnings from unemployment benefits and employment with New Brunswick. With the petitioner's retirement in 2023, he was at that point no longer making reasonable efforts to find suitable employment. As such, he is owed no back pay for the period he was in retirement. Thus, the petitioner is not entitled to any back pay award.

The petitioner claims that as a PERS member, he has also incurred economic loss due to his three months of unemployment in that he suffered a permanent monthly reduction in his pension benefit of $60.83. As the Commission does not have the jurisdiction to increase the petitioner's monthly pension, he may wish to address this issue to the Division of Pensions and Benefits.

Additionally, the petitioner states that he incurred a significant amount in additional work-related expenses, including an extended commute in both mileage and time. While the petitioner contends that the economic calculations should take

into account such additional out-of-pocket costs, the Commission does not have the ability to award such relief. *See N.J.A.C.* 4A:2-1.5.

Benefits

Pursuant to *N.J.A.C.* 4A:2-2.10(d), benefits shall include vacation and sick leave credits and additional amounts expended by the employee to maintain his or her health insurance coverage during the period of improper suspension or removal.

For purposes of determining the petitioner's sick leave and vacation credits, the Commission takes account that the petitioner retired, effective May 1, 2023, and later declined reinstatement following the issuance of the Commission's prior decision where it found that the appointing authority's action in laying off the petitioner in August 2019 was not justified. As such, the Commission proceeds as if the petitioner continued to be employed by the appointing authority until his retirement (effectively a reconstruction of his history).

Regarding sick leave credit, the petitioner should be credited with any unused sick leave prior to the layoff; sick leave for the period from August 30, 2019 through December 31, 2019; all of his sick leave for 2020 through 2022; and the proportionate amount of sick leave for 2023, since sick leave can accumulate from year to year without limit. *See N.J.S.A.* 11A:6-5 and *N.J.A.C.* 4A:6-1.3(f). However, the Commission does not order payment for this accumulated sick leave as it has no authority to do so. Payment for accumulated sick leave in local service is typically governed by such things as local government policy and collective negotiations agreements. Thus, if the petitioner is to be paid for his accumulated sick leave, such relief must come through some other mechanism, not an order by the Commission.

Regarding vacation leave credit, the petitioner is not due any vacation leave credit for 2019 through 2021 since vacation leave not taken in a given year can only be carried over to the following year. *See N.J.S.A.* 11A:6-3(e) and *N.J.A.C.* 4A:6-1.2(g). The petitioner is, however, due vacation leave credit for 2022 and proportionately for 2023. In this regard, the petitioner would be entitled to have his 2022 vacation leave credited or carried over and added to his proportionate 2023 vacation leave entitlement. *See id.* Further, pursuant to *N.J.A.C.* 4A:6-1.2(h), an employee who leaves service with a local jurisdiction shall be paid for unused earned vacation leave. In the prior decision, the Commission determined that the petitioner had been improperly laid off in 2019. Further, the petitioner later retired, effective May 1, 2023, thus in effect leaving service with the appointing authority. As such, the petitioner should receive relief pursuant to *N.J.A.C.* 4A:6-1.2(h). He shall be paid for his 2022 and proportionate 2023 vacation leave entitlements.

The parties agree, based on the governing regulation, that the petitioner should be reimbursed $4,881.30 for his expenses to maintain his health insurance coverage. Thus, the petitioner is entitled to this amount.

Counsel Fees

N.J.S.A. 11A:2-22 provides that the Commission may award reasonable counsel fees to an employee as provided by rule. *N.J.A.C.* 4A:2-2.12(a) provides that the Commission shall award partial or full reasonable counsel fees incurred in proceedings before it and incurred in major disciplinary proceedings at the departmental level where an employee has prevailed on all or substantially all of the primary issues before the Commission. *N.J.A.C.* 4A:2-2.12(c) provides as follows: an associate in a law firm is to be awarded an hourly rate between $100 and $150; a partner or equivalent in a law firm with fewer than 15 years of experience in the practice of law is to be awarded an hourly rate between $150 and $175; and a partner or equivalent in a law firm with 15 or more years of experience in the practice of law, or, notwithstanding the number of years of experience, with a practice concentrated in employment or labor law is to be awarded an hourly rate between $175 and $200. *N.J.A.C.* 4A:2-2.12(d) provides that if an attorney has signed a specific fee agreement with the employee or employee's negotiations representative, the attorney shall disclose the agreement to the appointing authority. The fee ranges set forth in (c) above may be adjusted if the attorney has signed such an agreement, provided that the attorney shall not be entitled to a greater rate than that set forth in the agreement. *N.J.A.C.* 4A:2-2.12(e) provides that a fee amount may also be determined or the fee ranges in (c) above adjusted based on the circumstances of a particular matter, in which case the following factors (see the Rules of Professional Conduct of the New Jersey Court Rules, at RPC 1.5(a)) shall be considered: the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; the fee customarily charged in the locality for similar legal services, applicable at the time the fee is calculated; the nature and length of the professional relationship with the employee; and the experience, reputation and ability of the attorney performing the services.

Initially, there is no basis to deny counsel fees in their entirety based on the appointing authority's contention that petitioner's counsel worked on a contingency fee basis related to his Superior Court litigation. There is no evidence in the record for this. *Holland, supra*, cited by the appointing authority, is distinguishable. There, the court indicated:

> As to the fees applicable to the proceeding then under review by the [Commission], it noted Holland's fee agreement with counsel gave Holland a choice: he could elect to pay a contingency fee representing one-third of any back pay awarded or, actually pay for services at an hourly rate. The [Commission] correctly found "no indication in the

> record that Holland selected this [latter] option[,]" eliminating any fee award. *See N.J.A.C.* 4A:2-2.12(d) (limiting fee awards by the terms of counsel's fee agreement).

Mr. Lynch explained that the "fee arrangement . . . was contingent upon prevailing and being awarded reasonable [counsel] fees." He further explained:

> Many lawyers would not even have considered taking on this case or cases like this one, because of the time demands, the risks inherent in taking cases on contingency, the low hourly rate afforded attorneys in these types of cases, and the deferral of payment inherent in contingent cases.

There is no evidence in the record that the instant matter is comparable to *Holland*. As such, there is no basis to deny counsel fees outright, and the Commission proceeds to the appointing authority's more specific objections.

The appointing authority's objections to the billing include vagueness; the use of two attorneys to participate in hearings, phone conferences, and other activities; entries that allegedly pertain to a Superior Court matter; entries that mention PERC or the unfair labor practice charge; and the procedural history of this matter, which requires a 50% reduction in any remaining bills. The Commission finds that the petitioner adequately responded to these objections. Ms. Spiller certified that billing entries submitted to the Commission do not relate to the Superior Court case, and there is otherwise no evidence in the record that any entries presented here relate to that matter. Both Mr. Lynch and Ms. Spiller represented the petitioner, so it would be inequitable to reduce fees on the basis that they worked together on various activities in the course of representing their client. Moreover, it is reasonable to expect that client and attorneys would be meeting and conferring multiple times over the course of the proceeding in order to provide the client with adequate representation. Deleting entries that mention PERC or the unfair labor practice would be unfair given that the PERC and Civil Service matters were consolidated. In the prior decision, the Commission noted that "as PERC has exclusive jurisdiction over the [EERA], it is bound by PERC's findings made therefrom." Thus, the layoff had not been substantially effected for the purposes of economy or efficiency. *See N.J.S.A.* 11A:8-1a. The Commission found that the appointing authority's exceptions that the petitioner had not satisfied his burden of proof under Civil Service law and rules that the layoff was not implemented in good faith was overborne by the ALJ's and PERC's findings that the layoff was based predominantly on anti-union animus in violation of the EERA. Notably, the petitioner could have argued anti-union animus even if this was only a Civil Service case and not a consolidated case with PERC. Further, with respect to entries related to the procedural history concerning the organization, marking, and submission of exhibits and the procedural history concerning stipulations, there is no evidence that the petitioner was proceeding in

bad faith or that these issues, as the petitioner puts it, "permeated" the proceedings. As such, it would be inequitable to remove these entries or impose a sweeping 50% reduction in counsel fees. As such, all entries through March 20, 2025, the issue date of the Commission's prior decision, will remain undisturbed.

Proceeding to billing activities that postdate the March 20, 2025 issuance of the Commission's prior decision, generally, a petitioner is entitled to counsel fees regarding his enforcement request *for his counsel fee award* since New Jersey courts have recognized that attorneys should be reimbursed for the work performed in support of any fee application. *See H.I.P., supra,* 291 *N.J. Super*. 144 at 163 [quoting *Robb v. Ridgewood Board of Education*, 269 *N.J. Super*. 394, 411 (Ch. Div. 1993)]. However, the petitioner is not entitled to an award of counsel fees for time spent on reinstatement, back pay, or benefits issues where the appointing authority did not unreasonably delay carrying out the Commission's order and did not act with an improper motivation. In the instant matter, the record does not evidence that the appointing authority unreasonably delayed implementing the Commission's order or that the appointing authority's actions were based on any improper motivation. Thus, the record does not reflect a sufficient basis for an award of counsel fees for time spent on reinstatement, back pay, or benefits issues. *See N.J.A.C.* 4A:2-1.5(b); *In the Matter of Lawrence Davis* (MSB, decided December 17, 2003); *In the Matter of William Carroll* (MSB, decided November 8, 2001). The initial list of services included the following entries:

DATE	**DESCRIPTION**	**HOURS**
3/21/2025	confer with client	0.5
5/12/2025	confer with client re reinstatement and economic issues	0.8
5/15/2025	Communication with Trent in effort to settle without CSC	0.4
5/19/2025	Communication with CSC information need assistance	0.3
6/5/2025	Review CSC communication and scheduling	0.2
6/6/2025	Review Trent correspondence seeking more time for Jackson	0.2
6/18/2025	Review materials in response to OPRA request from Township	2.5
6/19/2025	work on certifications and submission to CSC re back pay etc and attorney's fees	6.5
6/20/2025	Confer with client, revisions and edits to submission and client certification	3.0
	Total	14.4

As the number of these hours spent solely on the counsel fees issue is not clearly broken out, it is impossible to determine where these hours were solely related to the enforcement request related to counsel fees. Therefore, these hours are not reimbursable.

Ms. Spiller has also requested that the 14 hours she spent working on the petitioner's first reply in the instant request for back pay, benefits, and counsel fees[3] be reimbursed. Ms. Spiller's certification in the reply indicated that it was being made in reply to the appointing authority's opposition to the petitioner's "requests for backpay, benefits and [counsel] fees." She also noted that she reviewed the appointing authority's "40-page letter brief," which brief addressed the issues of back pay, benefits, and counsel fees. She further referenced three exhibits from the OAL hearing: a letter "[regarding] accrued sick and personal time;" a memo "[regarding layoff] and sick and personal day payments;" and emails "[regarding] agreement of sick time pay." While Ms. Spiller's certification does reflect work on the counsel fees issue, it appears her work was also in support of the petitioner's request for benefits. As, again, the number of hours spent solely on the counsel fees issue is not clearly broken out, the work performed on the reply is also not reimbursable.

In summary, the initial list of services sought reimbursement for 446.7 hours. The Commission deducts 14.4 hours incurred following the issuance of the Commission's prior decision. The time spent on the reply, which was not included in the initial list of services, is also not reimbursable. As such, counsel fees in the amount of $86,460.00 are awarded (432.3 hours x $200.00).

Costs

N.J.A.C. 4A:2-2.12(g) provides that reasonable out-of-pocket costs shall be awarded, including, but not limited to, costs associated with expert and subpoena fees and out-of-State travel expenses. Costs associated with normal office overhead shall not be awarded. Transcript expenses fall within the scope of the regulation. Thus, the petitioner is entitled to be reimbursed $2,241.31 for these expenses.

ORDER

Therefore, it is ordered that, within 30 days of receipt of this decision, Jackson pay Daniel Burke for his 2022 and proportionate 2023 vacation leave entitlements; $4,881.30 as reimbursement for his expenses to maintain health insurance coverage; counsel fees in the amount of $86,460.00; and costs in the amount of $2,241.31.

It is further ordered that Jackson credit Burke for unused sick leave as set forth in this decision. However, the Civil Service Commission does not order payment for the accumulated sick leave.

Burke's request for back pay is denied.

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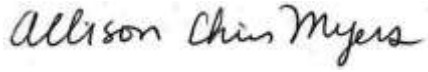
[3] It is noted that these 14 hours were not included within the initial list of services that sought reimbursement for 446.7 hours.

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 26TH DAY OF NOVEMBER, 2025



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Chairperson
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