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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Anthony Graves,
City of Newark

Request for Interim Relief

CSC Docket No. 2017-512

ISSUED: FEB 22 2017 (WR)

Anthony Graves, a Fire Captain with the City of Newark, represented by Tisha Adams, Esq., petitions the Civil Service Commission (Commission) for interim relief of his indefinite suspension, commencing on April 6, 2016, pending the disposition of criminal charges.

The record indicates that the appointing authority issued a Preliminary Notice of Disciplinary Action (PNDA) dated April 6, 2016, charging the petitioner with incompetency, inefficiency or failure to perform duties; conduct unbecoming a public employee; neglect of duty and other sufficient cause and asserting that the petitioner was charged with two counts of fourth-degree impersonation of a law enforcement officer stemming from events that occurred on November 30, 2014, where the petitioner initiated two motor vehicle stops. The PNDA indicates that the petitioner was immediately suspended and an indefinite suspension was sought. On May 11, 2016, after a departmental hearing, a Final Notice of Disciplinary Action (FNDA) was issued upholding the indefinite suspension pending the disposition of criminal charges, effective April 6, 2016. On July 22, 2016, a grand jury indicted the petitioner for second degree official misconduct, second degree pattern of official misconduct, two counts of fourth degree impersonating a law enforcement officer and second degree unlawful possession of a weapon.

On August 9, 2016, the petitioner filed a petition for interim relief with the Commission. Initially, the petitioner maintains that there is a clear likelihood that he will succeed on the merits. In this regard, the petitioner argues that "the nature of this matter stems from retaliation" against him for reporting that an Arson Unit employee was not properly certified. He also argues that the appointing authority

is retaliating against him for filing a civil lawsuit against it for workplace retaliation and racial discrimination. He claims that the Essex County Prosecutor did not file criminal charges against him and the matter was transferred to the Union County Prosecutor likely due to Fire Chief Centanni and a former acting Newark Public Safety Director who were friends with the Union Township Police Director. In this regard, he argues that one of the alleged victims in the incident underlying the charges did not file a complaint against him and the other one only did because "he was pressured by the Fire Fighter's Union." The petitioner also claims that the allegations against him are not serious. Moreover, he explains that as Captain of the Newark Fire Department's Arson Unit, he has been granted police powers and is permitted to carry a firearm. He contends that he was acting in his official capacity when he initiated the two motor vehicle stops that resulted in the charges against him. He further argues that the appointing authority has failed to demonstrate that he is unfit for duty or that his actions were criminal, dishonest, immoral or disgraceful. Accordingly, he reasons that because his immediate suspension is not necessary to maintain safety, health, order or effective direction of public services, granting his petition would not result in substantial injury to the appointing authority. Instead, he claims that granting his petition would serve the public interest.

Additionally, the petitioner argues that he will suffer irreparable harm if his indefinite suspension is not stayed as his salary with the appointing authority is his sole source of income. The petitioner maintains that as a result of his loss of income, he will have no money to pay for necessities for himself and his family. He also states that he will have no money to finance his lawsuit against the appointing authority or to defend himself against the criminal charges. The petitioner also argues that there is an absence of substantial injury to the other parties if his request is granted. He claims that he has had an exemplary career with the Newark Fire Department for over 17 years and has not received any additional disciplinary or criminal charges since the incident at issue. Finally, in light of his public service, the petitioner argues that the public interest is served in reinstating him. In support of his request, the petitioner submits a DVD recording of statements by several persons and a recording of one of the incidents at issue. The petitioner claims the information on the DVD recording demonstrates that there is a clear likelihood of success on the merits of this matter.

The petitioner also argues that he was not provided a departmental hearing on the substantive charges and has not received his FNDA. In this regard, he challenges the "genuineness and the authenticity of the documents submitted by the appointing authority." For instance, he argues that it is not his signature on the delivery card, nor that of anybody in his household. Moreover, he challenges the validity of the certified mail receipt, claiming that it "has no information recorded by the U.S. Postal Service on its face" and does not include a tracking barcode, date of delivery, and other markings. Finally, the petitioner cites a recent arbitration

case where a Police Captain was paid pending the disposition of criminal charges against him and requests similar treatment. Likewise, he observes that the Newark Fire Department currently has at least one employee on its payroll who has been indicted.

The appointing authority, represented by Andy Jong, Assistant Corporation Counsel, responds that the only issue before the Commission is whether it presented a valid basis to suspend the petitioner indefinitely pending his criminal charges. Initially, it asserts that he failed to establish a reasonable probability of success on the merits because he was indicted by a grand jury. The appointing authority also asserts that the nature and seriousness of the criminal charges, which involve dishonesty and abuse of power and directly relate to his position as a Fire Fighter, support the petitioner's indefinite suspension. It contends that the petitioner's claim that the criminal charges are a result of a conspiracy against him "is outrageous and unfounded." Rather, it states that the criminal matters against the petitioner "were transferred from the Essex County Prosecutor's Office to the Union County Prosecutor's Office due to a potential conflict of interest." Moreover, the appointing authority notes that the petitioner's civil suit is irrelevant in the present matter.

The appointing authority also contends that the petitioner will not be irreparably harmed if his request is denied. It argues that monetary loss, by itself, does not constitute irreparable harm as it can be remedied through an award of back pay. Moreover, the appointing authority claims that the petitioner's inability to continue financing his civil suit does not constitute irreparable harm, as his attorney's fee is most likely on a contingency basis, or could be arranged in that matter. The appointing authority argues that allowing the petitioner to stay on duty or remain on the payroll while facing serious criminal charges is not in the public interest, as it would impugn the integrity of the Newark Fire Department.

Furthermore, the appointing authority argues that the arbitration case that the petitioner cited has no precedential value. Moreover, it contends that the fact that another Fire Fighter was suspended with pay has no bearing in the instant matter. Additionally, the appointing authority states that the petitioner was provided a limited hearing, where it was determined that because the criminal charges against the petitioner were still pending, he would therefore remain indefinitely suspended without pay pending those charges. The appointing authority claims that it delayed the departmental hearing on the related administrative charges until after the criminal matters have resolved because disciplinary action may be unnecessary "in the event the court enters an order of forfeiture." Finally, the appointing authority claims that it provided the petitioner

with the FNDA and submits copies of the certified mail receipt and the domestic return receipt.¹

CONCLUSION

In reviewing this matter, it is not necessary to address the merits of the criminal charges against the petitioner. Rather, the issue to be determined is whether the nature and seriousness of the criminal charges support the necessity for an indefinite suspension. *N.J.A.C. 4A:2-2.5(a)2* provides that an employee may be suspended immediately and prior to a hearing when the employee is 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. See *N.J.S.A. 11A:2-13* and *N.J.A.C. 4A:2-2.7*; see also, *In the Matter of Paul Kleiber* (MSB, decided May 24, 2006) (Indefinite suspension upheld of a Police Officer criminally charged with official misconduct, hindering the prosecution of another, and conspiracy to commit these offenses, emphasizing that the criminal charges alleged that the appellant disclosed confidential information to a target of an investigation, warned the target of impending discovery, and provided false information to law enforcement personnel); *In the Matter of Matthew J. Fox* (MSB, decided May 24, 2006), *aff'd*, Docket No. A-5461-05T1 (App. Div. July 20, 2007) (Indefinite suspension upheld of a Fire Fighter indicted on one count of conspiracy to defraud the United States and five counts of tax evasion, emphasizing that the criminal charges were serious and involved dishonesty). Moreover, *N.J.A.C. 4A:2-2.7(a)1* provides that, if requested, an employee who is indefinitely suspended is entitled to a departmental hearing that:

[S]hall be limited to the issue of whether the public interest would best be served by suspending the employee until disposition of the criminal complaint or indictment. The standard for determining that issue shall be whether 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.

In the instant matter, there is no dispute that the petitioner was arrested and indicted on charges of second degree official misconduct, second degree pattern of official misconduct, two counts of fourth degree impersonating a law enforcement officer and second degree unlawful possession of a weapon. Clearly, the pending criminal charges are extremely serious. The petitioner argues that he did not receive a departmental hearing on the related administrative charges or receive the FNDA. However, the record indicates that the United States Postal Service delivered the FNDA, via certified mail, on May 14, 2016. Regardless, the petitioner's appeal of that FNDA has been accepted in this matter. Moreover, as

¹ The United States Postal Service certified mail receipt number indicates that the FNDA was delivered on May 14, 2016.

noted above, an employee who is indefinitely suspended is entitled to a departmental hearing on the limited issue as to whether the public interest would be best served by suspending the employee pending disposition of the criminal charges.²

Furthermore, the petitioner holds an extremely visible position of trust. The Commission has long recognized that Fire Fighters hold very unique positions, and any disregard for the law is unacceptable in a Fire Fighter who operates in the context of a paramilitary organization in which the ability to follow orders is crucial to saving lives. See *In the Matter of Bart Giaconia* (MSB, decided February 22, 2006); *In the Matter of James Alessio* (MSB, decided March 9, 1999). Fire Fighters “are not only entrusted with the duty to fight fires, they must also be able to work with the general public and other municipal employees, especially police officers.” *Karins v. City of Atlantic City*, 152 N.J. 532, 552 (1998). The pendency of a criminal indictment against an individual employed to protect and serve the public renders his indefinite suspension necessary in order to maintain the safety of the public and ensure effective direction of the firefighting services the appointing authority provides. To allow the petitioner to continue to perform his duties, or even to remain on the payroll while facing such serious charges would impugn the integrity of the Fire Department. See also *In the Matter of Bart Vallaro* (MSB, decided March 27, 2002); *In the Matter of Ronaldo Santiago* (MSB, decided August 28, 2011).

Since the Commission has found that the standards for an indefinite suspension, set forth in N.J.A.C. 4A:2-2.7, have been met, this is the final administrative determination concerning the petitioner’s indefinite suspension. See e.g. *Fox, supra*.

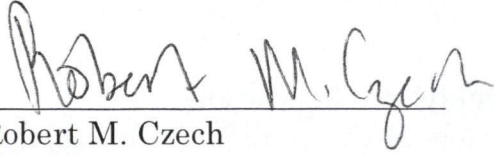
ORDER

Therefore, it is ordered that the petitioner’s request be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

² It is noted that the FNDA should have only included the criminal charges against the petitioner, and not the departmental charges, to support the indefinite suspension. However, the addition of these charges does not entitle the petitioner to any relief, since, as indicated, the departmental hearing regarding the indefinite suspension appears to have been appropriately conducted. Regardless, the Commission does not find the inclusion of those charges on the FNDA to be prejudicial as the petitioner will have the opportunity to defend himself against such administrative charges when his indefinite suspension concludes, if applicable.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 22nd DAY OF FEBRUARY, 2017



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