



STATE OF NEW JERSEY

In the Matter of Manuel Parra
 City of Union City, Department of
 Public Safety

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

CSC DKT. NO. 2018-694
 OAL DKT. NO. CSV 14254-17

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ISSUED: MAY 25, 2018 BW

The appeal of Manuel Parra, Police Officer, City of Union City, Department of Public Safety, removal effective August 7, 2017, on charges, were heard by Administrative Law Judge Susana E. Guerrero, who rendered her initial decision on January 26, 2018. No exceptions were filed.

Having considered the record and the Administrative Law Judge’s initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting of May 23, 2018, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge’s initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Manuel Parra.

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 23RD DAY OF MAY, 2018

Deirdre L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SUMMARY DECISION
(CONSOLIDATED)

MANUEL PARRA,

Petitioner,

v.

BERGEN COUNTY POLICE

ACADEMY,

Respondent.

OAL DKT. No. PTC 13808-17

**IN THE MATTER OF MANUEL PARRA,
CITY OF UNION CITY, DEPARTMENT
OF PUBLIC SAFETY.**

OAL DKT. NO. CSV 14254-17
AGENCY DKT. NO. 2018-694

Kathleen M. Theurer, Esq. for petitioner/appellant Manuel Parra (Law Office of Condon & Theurer, attorneys)

Kenneth B. Goodman, Esq., for respondent City of Union City Department of Public Safety (O'Toole, Scrivo, Fernandez, Weiner, & Van Lieu, attorneys)

Daniel E. Zwillenberg, Assistant County Counsel, for respondent Bergen County Police Academy (Julien X. Neals, County Counsel)

Record Closed: January 23, 2018

Decided: January 26, 2018

BEFORE SUSANA E. GUERRERO, ALJ:

STATEMENT OF THE CASE

This consolidated proceeding involves appeals by Manuel Parra (petitioner or Parra) from his dismissal by the Bergen County Police Academy (respondent or Police Academy) and his subsequent removal by the City of Union City Department of Public Safety (Union City). The Police Academy dismissed petitioner pursuant to Police Training Commission (PTC) rules and guidelines because petitioner was served with a Temporary Restraining Order (TRO). As a result of petitioner's dismissal from the Police Academy, Union City terminated his employment as a police recruit.

PROCEDURAL HISTORY

Petitioner filed a timely notice of appeal of his dismissal from the Police Academy, and the PTC transmitted the case to the Office of Administrative Law (OAL), pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13, where it was filed on September 19, 2017. Petitioner also appealed his dismissal from Union City, and the Civil Service Commission (CSC) transmitted the matter to the OAL, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13, where it was filed on September 28, 2017.

An Order of Consolidation and Predominant Interest was entered on November 22, 2017, consolidating both matters for hearing and determining that the PTC had the predominant interest since the disciplinary action taken against petitioner by Union City stems from the action taken by and under the auspices and control of the training academy petitioner was attending.

Respondents Union City and Police Academy filed motion for summary decision on December 7, 2017 and December 26, 2017, respectively. Petitioner filed an opposition to respondents' motions on January 18, 2018, and a reply was filed by Union City on January 23, 2018. A hearing in these consolidated matters was scheduled for

January 29, 2018, which was adjourned pending the disposition of the summary decision motions.

STATEMENT OF FACTS

I FIND the following FACTS are not in dispute:

Petitioner was hired by Union City as a Police Officer Recruit on June 30, 2017. As a condition of employment as a Police Officer for Union City, petitioner enrolled in the Bergen County Police Academy for training. On August 2, 2017, petitioner was served with a TRO, issued pursuant to the New Jersey Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq.

Upon learning of the TRO issued against petitioner, he was terminated from the Police Academy on August 3, 2017. On August 7, 2017, petitioner was served with a Preliminary Notice of Disciplinary Action (PNDA) and a Final Notice of Disciplinary Action (FNDA) for his immediate removal as a Union City Police recruit. The reason for removal, as noted on the PNDA and FNDA, was listed as: "On August 2nd 2017 Recruit Manuel Parra was served with a Temporary Restraining Order issued by Judge George Savino of the Lyndhurst Municipal Court (Bergen County, NJ). As a result of such, Recruit Parra was dismissed from the Bergen County Police Academy."¹

By Directive 3-2016, dated August 17, 2016, the PTC adopted a revised Basic Law Enforcement Court Training Manual that became effective January 1, 2017 and provides ". . . [A]ny trainee who is served with a Temporary Restraining Order (TRO) or a Final Restraining Order (FRO), issued pursuant to the New Jersey Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., shall be dismissed from the academy within 24 hours of the required notice being made to the academy."

Respondents assert that these consolidated matters are ripe for summary decision as there is no genuine issue of material fact. Specifically, respondents

¹ Petitioner was specifically charged with having violated N.J.A.C. 4A:2-2.3(A)(4) (sic), Inability to perform duties; and Departmental violation 8:1.5(C), Inability to perform duties.

maintain that there is no dispute that petitioner was served with a TRO pursuant to the New Jersey Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq. and that the dismissal from the Police Academy was mandated by PTC rules. Union City also maintains that as a result of petitioner's dismissal from the Police Academy, he failed to complete the Police Academy training and was, therefore, appropriately terminated from Union City pursuant to N.J.S.A. 52:17B-68(a).

In opposing summary decision, petitioner submitted a Certification of Counsel. The certification states that the Police Academy should have reinstated petitioner because the restraining order was dismissed on September 11, 2017, and because the TRO was obtained by petitioner's paramour with the express purpose of preventing him from continuing as a police recruit. The certification further states that there is no substantiation of the underlying domestic violence allegations and once the restraining order was dismissed, any bar to petitioner's ability to serve as a public recruit was lifted.

Moreover, the certification states that Union City violated petitioner's right to due process when it failed to afford him five days, after receiving the PNDA, to notify Union City of his request for a hearing, and that Union City improperly dismissed petitioner based on PTC policy because the policy only applies to Bergen County and not the appointing authority. Petitioner argues that, despite Union City's assertion, it was not constrained to terminate petitioner.

Union City filed a reply to petitioner's opposition. Union City asserts that while the merit of the TRO is immaterial to the legal positions of the parties, the petitioner's contention that the TRO was based on "wholly uncorroborated allegations" is inaccurate as reflected in the language contained in the Municipal Court Judge's order finding good cause to issue the TRO. Union City maintains that its dismissal of petitioner was appropriate because he failed to complete the Police Academy as required.

LEGAL ARGUMENT

Summary decision may be granted "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any

material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b).

The standard for granting summary judgment (decision) is found in Brill v. Guardian Life Insurance Company of America, 142 N.J. 520 (1995). In Brill, the Court looked at the precedents established in Matsushita Electrical Industrial Co. v. Zenith Radio Corporation, 475 U.S. 574, (1986), Anderson v. Liberty Lobby, 477 U.S. 242, (1986), and Celotex Corporation v. Catrett, 477 U.S. 317, (1986), wherein the Supreme Court adopted a standard that "requires the motion judge to engage in an analytical process essentially the same as that necessary to rule on a motion for a directed verdict: 'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" Brill, 142 N.J. at 533 (quoting Liberty Lobby, 477 U.S. at 251-52). The Court stated that under the new standard,

a determination whether there exists a "genuine issue" of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact-finder to resolve the alleged disputed issue in favor of the non-moving party. The "judge's function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial."

[Brill, 142 N.J. at 540 (quoting Liberty Lobby, 477 U.S. at 249).]

The Brill standard contemplates that the analysis performed by the trial judge in determining whether to grant summary judgment should comprehend the evidentiary standard to be applied to the case or issue if it went to trial. "To send a case to trial, knowing that a rational jury can reach but one conclusion, is indeed 'worthless' and will 'serve no useful purpose.'" Brill, 142 N.J. at 541.

Following the Brill standard, after considering all papers and evidence filed in support of and in opposition to summary decision, I **CONCLUDE** that there are no

issues of fact that require a plenary hearing and that this matter is ripe for summary decision.

Petitioner's Dismissal from the Academy

The Bergen County Police Academy is a school approved by the PTC pursuant to N.J.A.C. 13:1-3.1 et seq. to provide basic courses of study for law enforcement trainees. The PTC has the power and duty to promulgate rules and regulations. N.J.S.A. 52:17B-71. N.J.A.C. 13:1-7.2(a)(8) vests the Academy with the power

[t]o dismiss a trainee who has demonstrated that he or she will be ineligible for Commission certification, for unacceptable behavior or for other good cause.

Here, petitioner does not dispute that a TRO was issued against him pursuant to the New Jersey Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17, et seq. while he attended the Bergen County Police Academy as a police recruit. The Police Academy was required to dismiss petitioner within twenty-four hours of receiving notice of the TRO pursuant to the controlling PTC Directive N. 3-2016. This PTC Directive does not provide the Police Academy any discretion to evaluate the merits of the TRO or wait for disposition of the restraining order, nor does it require the agency to reverse its determination when a restraining order is later dismissed. Since there is no dispute that a TRO was issued here, and that PTC's rules require immediate dismissal from the Police Academy when a recruit is served with a TRO, I must **CONCLUDE** that the Police Academy appropriately dismissed petitioner from the Police Academy as mandated by PTC rules.

Petitioner's Termination of Employment

An appointing authority may discipline an employee for, among other causes, an inability to perform duties. N.J.A.C. 4A:2-2.3(a)(3). The Department bears the burden of proving the charges against petitioner by a preponderance of the credible evidence. See In re Polk, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962). In this matter, Union City terminated petitioner's employment predicated on his inability to

perform duties, stemming from his failure to successfully complete the training course at the Police Academy.

The statutory scheme governing police training dictates that successful completion of a police training course at a PTC-approved school is a mandatory prerequisite to a permanent appointment as a police officer. N.J.S.A. 52:17B-68 instructs that "every municipality and county shall require that no person shall hereafter be given or accept a permanent appointment as a police officer unless such person has successfully completed a police training course at an approved school." In other words, the training laws apply to all police officers and establish a classification of temporary or probationary employment for police officers until successful completion of the mandatory program of training. Borger v. Borough of Stone Harbor, 178 N.J. Super. 296, 301-02 (Ch. Div. 1981); see N.J.S.A. 52:17B-68, -69.

The failure to complete the training provided by the Academy is grounds for termination of employment. In its motion, Union City relies on Gottlieb v. Monmouth County Sherriff's Office, 1995 N.J. AGEN LEXIS 1057 (Feb. 7, 1995), which states:

The controlling statute, N.J.S.A. 52:17B-68.1 leaves no room for discretion. Before permanent appointment, there must be completion of the basic Police Training Commission course for correction officers, among others. In like fashion, civil service rules do not anticipate continued employment of law enforcement officers who do not complete the Police Training Commission course, if so required The appointing authority, the New Jersey Department of Personnel and Merit System Board may only look to the fact, or no, of course completion. Here, there was none. For that reason, with the threshold condition unmet, the appointment must cease. (Emphasis added.)

Here, as a result of petitioner's dismissal from the Academy and subsequent inability to complete the training, petitioner could not qualify for employment as a Police Officer with Union City. Accordingly, I **CONCLUDE** that Union City's determination to terminate petitioner's employment for failure to complete the Police Academy, a sine qua non to a permanent appointment, was within the scope of its authority and cannot be said to be arbitrary, capricious or unreasonable under the circumstances.

ORDER

It is hereby **ORDERED** that the respondent Union City Department of Public Safety's motion for summary decision is **GRANTED**.

It is hereby **ORDERED** that the respondent Bergen County Police Academy's motion for summary decision is **GRANTED**.

I hereby **FILE** my initial decision with the **POLICE TRAINING COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **POLICE TRAINING COMMISSION**, which by law is authorized to make a final decision in this matter. If the Police Training Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

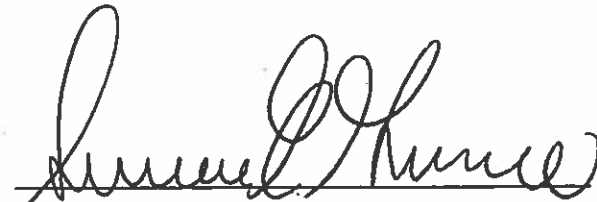
Pursuant to N.J.A.C. 1:1-17.8, upon rendering its final decision the **POLICE TRAINING COMMISSION** shall forward the record, including this recommended decision and its final decision, to the **CIVIL SERVICE COMMISSION**, which may subsequently render a final decision on any remaining issues and consider any specific remedies that may be within its statutory grant of authority.

Upon transmitting the record, the **POLICE TRAINING COMMISSION** shall, pursuant to N.J.A.C. 1:1-17.8(c), request an extension to permit the rendering of a final decision by the **CIVIL SERVICE COMMISSION** within forty-five days of the predominant-agency decision. If the **CIVIL SERVICE COMMISSION** does not render a final decision within the extended time, this recommended decision on the remaining issues and remedies shall become the final decision.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DEPUTY**

ATTORNEY GENERAL, POLICE TRAINING COMMISSION, Richard J. Hughes Justice Complex, PO Box 085, Trenton, New Jersey 08625-0085, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

January 26, 2018
DATE


SUSANA E. GUERRERO, ALJ

Date Received at Agency:

January 26, 2018

Date Mailed to Parties:

January 26, 2018

jb



PHILIP D. MURPHY
Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
POLICE TRAINING COMMISSION
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MANUEL PARRA,

Petitioner

FINAL DECISION

v.

OAL Docket No. PTC 13808-17

BERGEN COUNTY POLICE ACADEMY,

OAL Docket No. CSV 14254-17

Respondent

(CONSOLIDATED)

The Police Training Commission received an Initial Decision in this matter on January 31, 2018. The Police Training Commission requested and was granted one extension on February 5, 2018 pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.8. This final decision was rendered within the time limits prescribed by N.J.A.C. 1:1-18.6 and N.J.A.C. 1:1-18.8.

Petitioner Manuel Parra was enrolled in the Bergen County Police Academy through the Union City Police Department. On August 3, 2017, Petitioner was dismissed from the Police Academy after he was served with a Domestic Violence Temporary Restraining Order (TRO) on August 2, 2017. On August 7, 2017, Petitioner was served with a Preliminary Notice of Disciplinary Action and a Final Notice of Disciplinary Action for immediate removal as a Union City Police Recruit.

Petitioner filed an appeal with the Police Training Commission, which was referred to the Office of Administrative Law. Petitioner also filed an appeal of his dismissal from Union City Police Department. On November 22, 2017, an Order of Consolidation and Predominant Interest was entered consolidating petitioner's dismissal from the Academy and termination as a Union City police recruit. The Police Training Commission was determined to have the Predominant Interest.



Respondents Union City Police Department and Bergen County Police Academy filed motions for summary decision on December 7, 2017 and December 26, 2017, respectively. A plenary hearing for these consolidated matters had been initially scheduled for January 29, 2018. The hearing was adjourned pending the disposition of the summary decision motions.

On January 26, 2018, following consideration of all papers and evidence filed, the Honorable Susana E. Guerrero, Administrative Law Judge, determined that Petitioner had been dismissed from the academy following the issuance of a Temporary Restraining Order against the Petitioner, pursuant to the New Jersey Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17, et seq. and that the Order had been issued while the petitioner was attending the police academy. Pursuant to PTC Directive 3-2016, any trainee who is served with a TRO or an FRO must be dismissed from with Academy within 24 hours. Judge Guerrero concluded there were no issues of fact that required a plenary hearing and that the matter was ripe for a summary decision.

On January 26, 2018, Judge Guerrero granted the Motions for Summary Decision filed by the Bergen County Police Academy and the City of Union City Department of Public Safety, concluding that the Petitioner was appropriately dismissed from the police academy and terminated from employment.

On April 4, 2018, at a regular meeting of the Police Training Commission, the commissioners reviewed the Initial Decision rendered by Judge Guerrero. The commissioners voted to **ADOPT** the Initial Decision as the **FINAL DECISION**.

POLICE TRAINING COMMISSION

By: 
John F. Cunningham, Chairman

Date: 4/16/2018

