



STATE OF NEW JERSEY

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

In the Matter of Michael Chirico,
Newark

CSC Docket No. 2020-2363

Request for Interim Relief

ISSUED: JUNE 19, 2020 (SLK)

Michael Chirico, a Police Officer with Newark, represented by Giovanna Giampa, Esq., petitions the Civil Service Commission (Commission) for interim relief regarding his indefinite suspension.

By way of background, Newark alleged that on January 18, 2020, Chirico, while on duty and in full uniform, drove his personal vehicle on a one-way street causing an accident. Further, it alleged that he gave false information, insomuch as he allegedly stated that had drove out of the parking lot on the corner of the accident prior to the accident where video evidence showed that he was driving the wrong way on the street prior to the collision with the civilian’s vehicle. On January 24, 2020, Chirico was served with a Preliminary Notice of Disciplinary Action (PNDA) charging him with violating department rules and regulations Chapter 3:1.1 – Conduct in Public and Private, *N.J.A.C.* 4A:2.3(a)(6) – Conduct Unbecoming a Public Employee, departmental rules and regulation Chapter 3:2.7 - Knowledge of Laws and Regulations, and department rules and regulations Chapter 18:22 – False Statement and suspending him “indefinitely” without pay effective that same date. On February 21, 2020, a limited hearing was held. On February 28, 2020, he was served with a Final Notice of Disciplinary Action (FNDA) which sustained the charges and continued his indefinite suspension without pay.

Subsequently, Chirico petitioned the Commission for interim relief. In his request, Chirico argued that since he has not been charged with a crime, he cannot be indefinitely suspended, and any potential criminal investigation can be carried out while he is on modified duty or suspended with pay. Further, he stated that he is suffering immediate and irreparable damages as he is without any income and

there would be no substantial injury to others if he continued to serve as a Police Officer. Moreover, Chirico asserted that it is in the public's best interest if he continues to serve as a Police Officer as he has not been charged with a crime and he does not pose any threat to the department or the public if he continues to serve. Accordingly, he requests to be immediately reinstated with back pay and benefits.

In response, this agency advised Newark that since the specifications in the FNDA do not indicate that Chirico is subject to pending criminal charges, it could not suspend him indefinitely without pay. Further, it indicated that Newark could immediately suspend him prior to a hearing if it determined that he 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. Further, this agency indicated that a departmental hearing on the merits of the charges should have been conducted within 30 days of service of the PNDA unless waived by the employee or a later date is agreed to by the parties. Alternatively, if criminal charges were being explored, Chirico could be suspended with pay. Therefore, this agency requested that Newark comply with the applicable administrative provisions and either immediately hold a departmental hearing on the merits of the charges and issue a new FNDA indicating the disposition of the charges and the penalty, if applicable, or amend the FNDA indicating that the suspension is with pay and the reason for the continued suspension. Despite being provided the opportunity, Newark did not respond.

CONCLUSION

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.

N.J.S.A. 11A:2-13 and *N.J.A.C.* 4A:2-2.5(a)1 provides 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. However, a PNDA with opportunity for a hearing must be served in person or by certified mail within five days following the immediate suspension. *N.J.A.C.* 4A:2-2.5(d) indicates 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. *N.J.A.C.* 4A:2-2.6(d) states that within 20 days of the hearing, or such additional time as agreed to by the

parties, the appointing authority shall make a decision on the charges and furnish the employee either by personal service or certified mail with a FNDA.

N.J.A.C. 4A:2-2.7 provides, in pertinent part, that an indefinite suspension can only be imposed where there is a “pending criminal complaint or indictment.”

Per *N.J.A.C.* 4A:2-2.4(b), in local service, the appointing authority may provide that a suspension be with or without pay.

In this matter, Chirico was “indefinitely” suspended without being charged with a crime. In this regard, there is no evidence in the record that there is any **pending** criminal charges or indictment. A criminal investigation is insufficient to impose an indefinite suspension. Further, there has been no evidence presented that a full departmental hearing was held on the merits of the charges. Moreover, this agency advised Newark that it either immediately hold a departmental hearing and issue a new FNDA indicating the disposition of the charges or amend the FNDA indicating that the suspension is with pay and the reason for the continued suspension. However, although given the opportunity, Newark failed to respond. Therefore, the Commission finds that the appointing authority is in non-compliance with the applicable administrative provisions and the “indefinite” suspension is unsustainable.

However, given the nature of the charges, and the standards of *N.J.A.C.* 4A:2-2.5(a)1, there was initially a basis for an **immediate** suspension without pay. Regardless, pursuant to *N.J.A.C.* 4A:2-2.5(a)1, *N.J.A.C.* 4A:2-2.5(d) and *N.J.A.C.* 4A:2-2.6(d), such a suspension can only generally span a 55 days from its inception, allowing for the maximum time for the departmental hearing process to be completed. Accordingly, in this case, given the procedural due process violations committed by Newark, the Commission orders that Chirico’s immediate suspension beginning on January 24, 2020 shall be considered without pay through March 19, 2020, and thereafter with pay until he is either reinstated or a departmental hearing on the merits is held and the disposition of a new FNDA sustaining the charges is issued. The Commission orders that any departmental hearing must be commenced no later than 20 days from the issuance of this decision. Further, Newark is to provide Chirico back pay from March 20, 2020 until his reinstatement or issuance of a new FNDA. Finally, the Commission warns Newark that if it fails to hold a departmental hearing and issue a new FNDA or reinstate Chirico within the specified time frame, upon the Commission finding that Newark has not complied with this order, the Commission will impose fines up to \$10,000 pursuant to *N.J.A.C.* 4A:10-2.1.

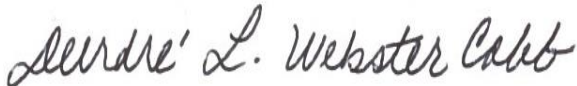
ORDER

Therefore, it is ordered that Michael Chirico’s petition for interim relief is granted in part. Within 20 days of the issuance date of this decision, Chirico shall

be reinstated or a departmental hearing on the merits of the charges must be commenced. Further, Chirico shall be awarded back pay from March 20, 2020 until his reinstatement or issuance of a new Final Notice of Disciplinary Action.

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
17TH DAY OF JUNE, 2020



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