



**STATE OF NEW JERSEY**

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

In the Matter of Norberto Soares,  
Newark

CSC Docket No. 2020-2362

Request for Interim Relief

**ISSUED: JUNE 19, 2020 (SLK)**

Norberto Soares, a Police Lieutenant 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, Soares neglected his duty when he was assigned to supervise the Metro Unit, but did not book any of the units as per his log sheet, and his AVL allegedly showed that he was not within the Metro grid consistently during his tour of duty. On January 24, 2020, he was served with a Preliminary Notice of Disciplinary Action (PNDA) charging him with violating department rules and regulations Chapter 18:6 – Neglect of Duty, Chapter 18:29.3 - Inefficiency or Incompetence of Superior Officers and Chapter 18:22 – False Statement, and indefinitely suspending without pay effective that same date. On February 21, 2020, a limited hearing was held. On February 28, 2020, he was served a Final Notice of Disciplinary Action (FNDA) sustaining the charges and continuing his suspension without pay.

Subsequently, Soares petitioned the Commission for interim relief. In his request, Soares 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 Lieutenant. Moreover, Soares asserted that it is in the public’s best interest if he continues to serve as a Police Lieutenant 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 Soares 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, Soares 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, Soares 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.

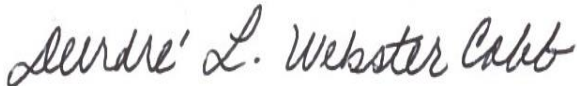
However, given the nature of the charges, and the standards of *N.J.A.C.* 4A:2-2.5(a)1, there was initially a basis for an **immediate** suspension without pay. Regardless, pursuant to *N.J.A.C.* 4A:2-2.5(a)1, *N.J.A.C.* 4A:2-2.5(d) and *N.J.A.C.* 4A:2-2.6(d), such a suspension can only generally span 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 Soares’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 Soares 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 Soares 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 Norberto Soares's petition for interim relief is granted in part. Within 20 days of the issuance date of this decision, Soares shall be reinstated or a departmental hearing on the merits of the charges must be commenced. Further, Soares 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  
17<sup>TH</sup> DAY OF JUNE, 2020



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