



it may award interest on the back pay award should it determine that the County unreasonably delayed compliance during an enforcement action. Finally, the Commission noted that the parties needed to inform the Commission within 60 days of the October 21, 2020 order if there was a dispute regarding back pay, and if not, the Commission would assume that the issue had been amicably resolved and the Commission's October 21, 2020 would become a final administrative decision where any further review could be pursued in the Superior Court of New Jersey, Appellate Division.

In this matter, Ruggiero presents that the County still refuses to reinstate her and discuss her back pay, which is causing her serious economic consequences. Therefore, she requests that the Commission take any necessary steps to enforce its order, establish the back pay award amount with interest owed, force the County to pay her that amount and immediately reinstate her. In the alternative, it requests front-pay until reinstatement. Additionally, Ruggiero requests that the County be fined. Ruggiero notes that not a single determination indicates that she should be removed as the hearing officer and the ALJ recommended a six-month suspension and the Commission ordered a 30 working day suspension. As such, she asserts that there is no basis for the County not to reinstate her.

Ruggiero submits a certification where she indicates that her salary at the time of her removal was \$54,245.76, with an hourly rate of \$24.6372. She presents that she was unemployed from January 3, 2019 until July 8, 2019 and she lists all of the employers she contacted during this period to seek employment. Ruggiero indicates that she commenced employment with DM Medical Billing, performing medical transcription, where she remains employed. She states that she earned \$14,454.64 from July 9, 2019 through December 31, 2019. She also submits documentation that shows that she earned \$13,185 in unemployment compensation in 2019. Further, Ruggiero represents that from January 1, 2020 through December 18, 2020, she earned \$29,085.43<sup>1</sup> from DM Medical Billing and her hourly rate is \$15.50. She notes that while employed by the County, she was entitled to family health insurance coverage and pension benefits and she receives neither through her current employer. Ruggiero also notes that she was entitled to 15 sick days, four personal days, 13 holidays, and 20 vacation days from the County. She presents that she purchased health insurance from April 2019 through December 2020 at a cost of \$2,943.30.<sup>2</sup>

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<sup>1</sup> Ruggiero's earning statement indicates that that her gross pay for the period ending December 16, 2020 was \$32,972.19. The statement indicates her pay as \$29,285.43 regular, \$578.76 overtime, \$434.00 vacation, \$558.00 sick, \$248.00 personal, \$868.00 holiday and \$1,000.00 bonus. She argues that since the County does not provide a cash value for vacation, sick or holiday pay, any such payments to her should not be included. Additionally, she argues that since bonus and overtime payments are not available from the County, these payments should also not be included in her mitigation of back pay. Therefore, Ruggiero asserts that her mitigation of back pay for 2020 should be limited to \$29,285.43.

<sup>2</sup> Ruggiero indicates that her monthly premium in 2019 was \$93.22 and \$91.36 in 2020, and that she made an additional payment of \$1,085 because of excess advance premium credits in connection with

Ruggiero states that she should be credited with seniority and all vacation, personal and sick leave she would be entitled retroactive to her separation. Additionally, she indicates that the County is obligated to make a retroactive pension payment on her behalf from the date of her separation until her reinstatement. Ruggiero asserts that since she did not receive any medical benefits during her separation, the County should not deduct medical benefit contributions from her back pay award. She states that the County has refused to reinstate her and asserts that any back pay award should be adjusted to cover the period from the date of her separation until the actual date of reinstatement and reflect any subsequently negotiated contractual increase to her County salary.

In response, the County, represented by William M. Tambussi, Esq., presents that Ruggiero was suspended for using a racial slur on December 4, 2018 and the Commission determined that the appropriate penalty was a 30 working day suspension. Therefore, it states that based on the Commission's order, Ruggiero should have been returned to work on January 16, 2019. The County indicates that Ruggiero's hourly rate was \$24.6372, she had an eight-hour work day and a 40-hour workweek. It presents that she earned \$197.0976 per workday and that 504 work days have passed from January 16, 2019 until December 22, 2020. Therefore, the County indicates that her gross salary was \$99,337.19 during this time. It indicates that her gross salary should be mitigated based on her unemployment (\$13,185), 2019 wages (\$14,454.64), 2020 wages until September 9, 2020 (\$23,532.24) and 2020 wages from September 10, 2020 until December 22, 2020 (\$9,052.00). Therefore, the County asserts that her gross pay should be mitigated by \$39,113.31.<sup>3</sup> Further, it notes that her back pay must be further reduced by pension contributions and payroll taxes.

Additionally, the County argues that the Commission should further reduce her back pay as it was her egregious conduct that brought about this discipline and she has not performed any work for the County during this time. It cites *Belleville v. Coppla*, 187 N.J. Super. 147 (App. Div. 1982) that indicated that back pay was not mandatory for those who have been reinstated, but the circumstances do not warrant the receipt of back pay. In *Coppla*, the Appellate Division denied back pay from the end of the suspension until that end of the statutory maximum period of suspension of six months. The County argues that the same consideration is warranted in this matter. It presents that the period between the end of her 30 working day suspension, January 16, 2019 and the maximum period of suspension under N.J.A.C. 4A:2-2.4(a) on June 4, 2019 is 100 working days, which is equal to \$19,709.76. Applying this additional reduction, the County argues that final amount of Ruggiero's back pay is \$19,403.55. It asserts that such a reduction would not be a "*de facto*" six-

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health insurance under the Affordable Care Act. She notes that her monthly premium will increase to \$109.13 in January 2021.

<sup>3</sup> The County based Ruggiero's 2020 wages on documentation it received from counsel through September 9, 2020 and what it believed she likely earned from September 10, 2020 through December 22, 2020 based on this documentation.

month suspension because her record would reflect a shorter suspension which may be significant in the event of future disciplinary actions. *See Coppla, supra.*

The County also argues that enforcement is inappropriate at this juncture. It asserts that although *N.J.A.C. 4A:10-2.1(a)* provides that the Commission may issue fines and other actions for non-compliance, this regulation indicates that the Commission shall conduct an investigatory hearing, or other review, as appropriate prior to taking such action. Therefore, the County believes it is entitled to certain due process rights before the Commission can make a finding of noncompliance. The County denies any noncompliance, and to the extent that the Commission intends to exercise its authority under *N.J.A.C. 4A:10-2.1(a)*, it requests that the Commission hold an investigatory hearing at which the County can rebut any claims of noncompliance. It asserts that this is the only way to ensure that County is being treated justly and equitably.

In reply, Ruggiero states that her suspension without pay was effective December 4, 2018, and her return to work should have been January 15, 2019 and not January 16, 2019 as indicated by the County. Regarding the County's argument that her suspension should be extended to six months under *Coppla, supra*, she asserts that the Commission already rejected the County's request for reconsideration and it should not get a "third bite at the apple" and be able to re-litigate an issue that has already been adjudicated. Further, Ruggiero argues that the County has not identified any "special circumstances" or "equitable considerations" that were present in *Coppla* that would justify extending her suspension to six months as this matter involved her using an inappropriate term as part of an overheard, private telephone conversation that was not directed at anyone or regarding anything in the workplace, and not meant to be used as a threat or racial epithet. Additionally, Ruggiero argues that the Appellate Division in *Coppla* disregarded the longstanding principle that a reviewing Court has no power to act independently as an administrative tribunal or to substitute its judgment for that of the Agency. Additionally, she asserts that *N.J.A.C. 4A:2-2.10(a)* does not authorize the Commission to establish one disciplinary period for the suspension and a different period for mitigated back pay upon a different assessment of the offense and the appropriate penalty. Moreover, despite the County's claim that enforcement is inappropriate, the Commission's prior orders clearly stated that the parties were to make a good faith effort to resolve the back pay issue and that Ruggiero was to be immediately returned to work even while resolving any back pay dispute. However, the County has done neither and the County has clearly indicated that it has no intention of reinstating her even after the back pay issue is resolved. Therefore, Ruggiero argues that a hearing is neither necessary nor warranted as the County has not demonstrated any attempt to comply with the Commission's orders.

## CONCLUSION

*N.J.A.C.* 4A:2-1.1(d) provides that except when a hearing is required by law, this chapter or *N.J.A.C.* 4A:8, or where the Commission finds that a material and controlling dispute of fact exists that can only be resolved by a hearing an appeal will be reviewed on a written record.

*N.J.A.C.* 4A:10-2.1(a) provides that where there is evidence of a violation of or noncompliance with Title 11A, New Jersey Statutes, or Title 4A, *N.J.A.C.*, the Commission shall conduct an investigatory hearing or other review, as appropriate. If a violation or noncompliance is found, the Commission may:

1. Issue an order of compliance;
2. Assess costs, charges, and fines not to exceed \$ 10,000;
3. Order the appointment of an eligible from an outstanding list;
4. In State service, consolidate personnel functions;
5. Initiate a civil action in the Superior Court;
6. Recommend criminal prosecution; or
7. Take other appropriate action pursuant to law or rule.

*N.J.A.C.* 4A:2-2.10(a) provides that where a disciplinary penalty has been reversed, the Commission shall award back pay, benefits, seniority or restitution of a fine. Such items may be awarded when a disciplinary penalty is modified.

*N.J.A.C.* 4A:2-2.10(d) provides, in pertinent part, that back pay shall include unpaid salary, including regular wages, overlap shift time, increments and across-the-board adjustments. 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.

1. Back pay shall not include items such as overtime pay, holiday premium pay and retroactive clothing, uniform or equipment allowances for periods in which the employee was not working.
2. The award of back pay shall be reduced by the amount of taxes, social security payments, dues, pension payments, and any other sums normally withheld.
3. Where a removal or suspension has been reversed or modified, an indefinite suspension pending the disposition of criminal charges has been reversed, the 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 below.
4. Where a removal or a suspension for more than 30 working days has been reversed or modified or an indefinite suspension pending the disposition of criminal charges has been reversed, 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.

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- iv. 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.
- 5. An employee shall not be required to mitigate back pay for any period between the issue date of a Civil Service Commission decision reversing or modifying a removal or reversing an indefinite suspension and the date of actual reinstatement. The award of back pay for this time period shall be reduced only by the amount of money that was actually earned during that period, including any unemployment insurance benefits received.

*N.J.A.C. 4A:2-2.10(e)* provides that unless otherwise ordered, an award of back pay, benefits and seniority shall be calculated from the effective date of the appointing authority's improper action to the date of the employee's actual reinstatement to the payroll.

*N.J.A.C. 4A:2-2.10(f)* provides that when the Commission awards back pay and benefits, determination of the actual amounts shall be settled by the parties whenever possible.

*N.J.A.C. 4A:2-2.10(g)* provides that if settlement on an amount cannot be reached, either party may request, in writing, Commission review of the outstanding issue. In a Commission review:

- 1. The appointing authority shall submit information on the salary the employee was earning at the time of the adverse action, plus increments and across-the-board adjustments that the employee would have received during the separation period; and
- 2. The employee shall submit an affidavit setting forth all income received during the separation.

*N.J.A.C.* 4A:2-2.11(a) provides that when the Civil Service Commission makes an award of back pay, it may also award interest in the following situations:

1. When an appointing authority has unreasonably delayed compliance with an order of the Commission or Chairperson, as applicable; or
2. Where the Commission finds sufficient cause based on the particular case.

*N.J.A.C.* 4A:2-2.11(b) provides that where applicable, interest shall be at the annual rate as set forth in New Jersey court rules, R.4:42-11.

*N.J.A.C.* 4A:2-2.11(c) provides that before interest is applied, an award of back pay shall be reduced in accordance with *N.J.A.C.* 4A:2-2.10(d)2 and 3.

*N.J. Court Rules*, R. 4:42-11(a) provides that except as otherwise ordered by the court or provided by law, judgments, awards and orders for the payment of money, taxed costs and attorney's fees shall bear simple interest as follows:

- (i) For periods prior to January 2, 1986, the annual rate of return shall be as heretofore provided by this rule, namely, 6% for the period prior to April 1, 1975; 8% for the period between April 1, 1975 and September 13, 1981; and 12% for the period between September 14, 1981 and January 1, 1986.
- (ii) For judgments not exceeding the monetary limit of the Special Civil Part at the time of entry, regardless of the court in which the action was filed: commencing January 2, 1986 and for each calendar year thereafter, the annual rate of interest shall equal the average rate of return, to the nearest whole or one-half percent, for the corresponding preceding fiscal year terminating on June 30, of the State of New Jersey Cash Management Fund (State accounts) as reported by the Division of Investment in the Department of the Treasury, but the rate shall be not less than 0.25%.
- (iii) For judgments exceeding the monetary limit of the Special Civil Part at the time of entry: in the manner provided for in subparagraph (a)(ii) of this Rule until September 1, 1996; thereafter, at the rate provided in subparagraph (a)(ii) plus 2% per annum.

In its September 2, 2020 decision, the Commission modified Ruggiero's removal to a 30 working day suspension. The decision indicated that she was entitled to mitigated back pay, seniority, and benefits from 30 working days from her initial separation date to the date of her actual reinstatement. The decision ordered that under no circumstances should Ruggiero's reinstatement be delayed based on any dispute of back pay. The record indicates that Ruggiero's suspension without pay was effective December 4, 2018. Therefore, her reinstatement after her 30 working day suspension should have been January 15, 2019.<sup>4</sup> Therefore, for the purposes of

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<sup>4</sup> Paid holidays are considered working days in determining this date.

determining the back pay award in this matter, the Commission finds that the back pay award period is January 15, 2019 to September 2, 2020. See *N.J.A.C.* 4A:2-2.10(d)5.

The County indicates that Ruggiero's daily salary is \$197.0976. Further, it indicates that Ruggiero's gross salary between January 16, 2019 and December 22, 2020 is \$99,337.19.<sup>5</sup> Therefore, the Commission finds that Ruggiero's gross salary for the back pay award period is \$83,963.59.<sup>6</sup> Ruggiero indicates that she mitigated the back pay during the period in question by \$50,633.88.<sup>7</sup> Therefore, the Commission finds that the back pay award for the period in question is \$33,329.71 (\$83,963.59 - \$50,633.88 = \$33,329.71). Further, the Commission indicated in its October 21, 2020 decision that if the County failed to comply with its decision to immediately reinstate Ruggiero and make a good faith effort to resolve the back pay award, the Commission may award interest on the back pay award in accordance with *N.J.A.C.* 4A:2-2.11 if it determined that the County has unreasonable delayed in compliance during an enforcement action. Therefore, as the County has refused to reinstate Ruggiero and has failed to make a good faith effort to resolve the back pay award prior to this enforcement action, the Commission finds that the aforementioned back pay award shall be subject to 3.5 percent interest.<sup>8</sup> Regarding, Ruggiero's claim for reimbursement of her medical insurance premiums that she purchased under the Affordable Care Act, that request is denied as only medical insurance premiums to *maintain* insurance, and not to purchase new insurance, is to be included in a back pay award. See *N.J.A.C.* 4A:2-2.10(d).

Further, the Commission wholly rejects the County's argument that the Commission should further limit Ruggiero's back pay award based on *Coppla, supra*. Initially, this argument should have been made previously. Regardless, in *Coppla* the Appellate Division upheld the Commission's decision to modify a removal to a 60-day suspension, but limited the back pay award to only cover the period starting six-months after the separation date. However, the Commission notes that the Appellate Division has affirmed numerous cases where the Commission modified penalties and the back pay award was not modified by the Appellate Division to only begin after six months from the separation period. Further, in *Coppla*, the Appellate Division limited the back pay award where it found that the employee was intentionally

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<sup>5</sup> The County indicated that Ruggiero's gross salary between January 16, 2019 and December 2020 is \$99,337.19.  $\$99,337.19 + \$197.0976$  (to account for January 15, 2019) = \$99,534.29.

<sup>6</sup> There are 79 working days from September 3, 2020 through December 22, 2020.  $79 * \$197.0975 = \$15,570.7025$ .  $\$99,534.29 - \$15,570.7025 = \$83,963.59$ .

<sup>7</sup> 2019 unemployment (\$13,186) + 2019 gross pay (\$14,454.64) + 2020 gross pay (\$23,532.24) through September 9, 2020 = \$51,171.88. Gross pay for the period of August 27, 2020 through September 9, 2020 = \$1,076.79 which is divided in half (\$538.00) to deduct pay from September 3, 2020 through September 9, 2020. Thus,  $\$51,171.88 - \$538.00$  equals \$50,633.88.

<sup>8</sup> The Division of Investments 2020 average annual daily rate is 1.57, which rounds to 1.5, <https://www.nj.gov/treasury/doinvest/cash3.shtml>. 1.5 plus 2% per annum = 3.5 %. See *N.J. Court Rules*, R. 4:42-11(a)iii.



insubordinate to its superiors. As such, this case is distinguishable as Ruggiero made a racial slur while at work, but it was on a personal telephone call that was not made to anyone at work, but was overheard. In essence, had the Commission believed that Ruggiero should have been deprived of six-months of back pay, it would have found that the proper penalty was a six-month suspension.

Additionally, as the County has yet to reinstate Ruggiero, she is also entitled to pay from September 3, 2020 until her reinstatement. As stated above, Ruggiero earns \$197.0976 per day. There are 100<sup>9</sup> working days between September 3, 2020 and January 20, 2021. Therefore, the Commission finds that Ruggiero is entitled to receive \$19,709.76 in forward pay for this period. Further, this amount shall grow at the rate of \$197.0976<sup>10</sup> per day until she is reinstated. Additionally, it is noted that Ruggiero's forward pay shall not be reduced by any mitigation as it is only back pay the needs to be mitigated. See *N.J.A.C. 4A:2-2.10(d)5*.

Concerning the County's argument that enforcement is inappropriate at this time, it contends that *N.J.A.C. 4A:10-2.1(a)* requires that a hearing be held before the Commission issues an order of compliance, issues a fine, and/or takes any other action under this rule. However, *N.J.A.C. 4A:10-2.1(a)* provides that where there is evidence of a violation of or noncompliance with Title 11A, New Jersey Statutes, or Title 4A, *N.J.A.C.*, the Commission shall conduct an investigatory hearing *or other review, as appropriate*. Further, *N.J.A.C. 4A:2-1.1(d)* provides that except when a hearing is required by law, this chapter or *N.J.A.C. 4A:8*, or where the Commission finds that a material and controlling dispute of fact exists that can only be resolved by a hearing, an appeal will be reviewed on a written record. However, there are no material and controlling dispute of facts that exists. Instead, the County simply disagrees with the Commission's penalty and refuses to comply with the Commission's orders. As such, the Commission is now conducting its review of this matter for the **third time** and there is no basis for a hearing.

In its October 21, 2020 decision, the Commission granted Ruggiero's request for enforcement of its September 2, 2020 decision. Further, it ordered the County to immediately reinstate Ruggiero. Moreover, it warned the County that any delay in her reinstatement shall subject it to fines up to \$10,000. See *N.J.A.C. 4A:10-2.1(a)2*. Additionally, it ordered the County to make a good-faith effort to resolve her back pay. As the outstanding back pay issues have now been resolved, the Commission again warns the County that any further day in her reinstatement may result in the imposition of fines up to \$10,000. Accordingly, the County is again ordered to immediately reinstate Ruggiero.

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<sup>9</sup> Including paid holidays.

<sup>10</sup> The records indicate that Ruggiero's pay was \$197.0976 per day through December 22, 2020. If there is an increase in her pay after that date, that increase should be reflected in her forward pay until reinstatement.

**ORDER**

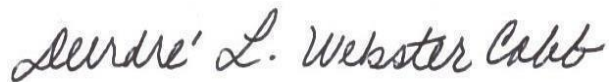
Therefore, it is ordered that this request for enforcement is granted and Camden County shall immediately reinstate Betsy Ruggiero.

Additionally, the Commission grants Ruggiero gross back pay in the amount of \$33,329.71 plus 3.5 percent interest. The County shall submit payment, subject to the provisions of *N.J.A.C. 4A:2-2.10(d)2*, to Ruggiero within 30 days of the receipt of this decision.

Further, the Commission awards gross forward pay in the amount of \$19,709.76 for the period of September 3, 2020 through January 20, 2021. Additionally, the Commission awards gross forward pay in the amount of \$197.0976 per working day from January 21, 2020 until she is reinstated. The County shall submit payment, subject to the provisions of *N.J.A.C. 4A:2-2.10(d)2*<sup>11</sup>, to Ruggiero within 30 days of the receipt of this decision.

As the matter of back pay has been resolved by the Commission, this is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.<sup>12</sup>

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 20<sup>H</sup> DAY OF JANUARY 2021



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Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

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<sup>11</sup> The Commission notes that this regulation refers to back pay. However, the same reductions are equally applicable to an award of front pay.

<sup>12</sup> As this is the third time that the Commission has reviewed this matter, even if Ruggiero requires additional enforcement for this order, such a request should be pursued in the Appellate Division.

Inquiries  
and  
Correspondence

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

c: Betsy Ruggiero  
James Katz, Esq.  
Diane Molle  
Ilene M. Lampitt, Assistant County Counsel  
William M. Tambussi, Esq.,  
Records Center