

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Patricia Lazzarini,  
Union City

CSC Docket No. 2021-1418

Interim Relief

ISSUED: JULY 2, 2021 (JET)

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Patricia Lazzarini, a Police Sergeant with Union City, represented by Ben Weathers, Esq., petitions the Civil Service Commission (Commission) for relief of her immediate suspension.

As background, the petitioner was arrested on January 30, 2021 by the Branchburg Township Police and charged with Failure to Maintain Lane in violation of *N.J.S.A. 39:4-88*, Driving While Intoxicated (DWI) in violation of *N.J.S.A. 39:4-50*, and with Refusal to Submit to a Breathalyzer test in violation of *N.J.S.A. 39:4-50.4(a)*. On February 18, 2021, the Union City Police Chief met with the petitioner and her union representative and explained that she may respond to the charges against her. By letter dated February 24, 2021, the petitioner indicated that she would not be responding to the criminal charges, and she requested the departmental hearing be held in abeyance pending disposition of the charges in municipal court.<sup>1</sup> The departmental hearing has not yet been conducted.<sup>2</sup> On February 19, 2021, the appointing authority issued a Preliminary Notice of Disciplinary Action (PNDA), immediately suspending the petitioner on charges of conduct unbecoming a public employee, other sufficient cause, and violations of departmental rules and regulations. It is also noted that, by way of a February 26, 2021 letter, the appointing authority notified the petitioner that she is subject to the terms of a June 7, 2016 “Last Chance Agreement.”<sup>3</sup>

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<sup>1</sup> It is noted that the charges are still pending disposition in municipal court.

<sup>2</sup> A departmental hearing was scheduled on March 19, 2021, however, it was not conducted since the petitioner requested that departmental procedures be held in abeyance.

<sup>3</sup> The Last Chance Agreement indicates that the petitioner and the appointing authority agree that in the future, if the petitioner violates any of the provisions of this Agreement, or any statute, regulation, rule, bylaw, handbook, guideline or policy of the City, including but not limited to conduct unbecoming, neglect of duty, misuse of property, or insubordination, petitioner agrees that the appropriate penalty therefore shall be termination of her employment from the City. In any resulting hearing, the issue

In this matter, the petitioner requests to receive her salary and be restored to her position. The petitioner argues that the appointing authority did not conduct a pre-termination hearing regarding her immediate suspension, violating her due process rights. The petitioner asserts that during the February 18, 2021 meeting, the Police Chief only informed her that she was required to accept documentation pertaining to the charges against her, and that it was not necessary for her attorney to accompany her to the meeting. The petitioner contends that, although she was advised in the presence of her union representatives during the February 18, 2021 meeting that she was immediately suspended without pay, she was not properly notified that she could respond to the charges. The petitioner adds that she did not have the opportunity to consult with her attorney prior to the implementation of the immediate suspension. The petitioner contends that the PNDA and documentation supporting the immediate suspension were drafted prior to the February 18, 2021 meeting, and the Police Chief merely recited the contents of the PNDA. The petitioner adds that, by letter dated February 24, 2021, she objected to the appointing authority's failure to provide her with a pre-termination hearing.

Additionally, the petitioner asserts that, prior to her immediate suspension, she was infected with COVID-19 and, as a result, she was assigned to perform administrative duties. As such, the petitioner maintains that, if she is reinstated, she could continue to perform such limited work as it would be beneficial to the jurisdiction, and the appointing authority would not experience a hardship as public services would not be interrupted.

In response, the appointing authority, represented by Nicole M. Demuro, Esq., maintains that during the February 18, 2021 meeting with the petitioner and her two union representatives, the Chief of Police explained the charges, described the evidence supporting the charges, and expressly provided her with an opportunity to respond. However, the petitioner declined the opportunity to respond and did not request any additional time to respond. Thus, the petitioner already had a pre-termination hearing. In this regard, she acknowledged in her February 24, 2021 letter that she was verbally informed by the Police Chief in the presence of her union representative that she was being suspended without pay. The appointing authority contends that the fact that petitioner did not respond to the charges does not establish it failed to follow the provisions of *N.J.A.C. 4A:2-2.5(b)*. Additionally, the appointing authority asserts that the petitioner is not in danger of immediate or irreparable harm, as any harm she is experiencing may be remedied through an award of backpay should she prevail at her hearing. The appointing authority adds that, based on the petitioner's conduct and the nature of the charges against her, the public interest is best served by keeping the petitioner out of the workplace in order to provide effective

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shall be limited to whether petitioner did in fact commit the underlying offense that precipitated her termination on the dates specified. Petitioner waives any right to, and shall be foreclosed from considering any lesser penalty other than termination.

direction of public services and to avoid putting the public at risk. Moreover, the appointing authority explains that the petitioner was arrested on three prior occasions during her employment, which resulted her entering into a June 7, 2016 “Last Chance Agreement.”

In response, the petitioner argues that, even if the Police Chief asked petitioner during the February 18, 2021 meeting if she had anything to say, such did not constitute an advisement of her right to a pre-termination hearing. The petitioner explains that, if the February 18, 2021 meeting was her only opportunity to state that she should not be suspended without pay, she was not advised of such opportunity. As such, the petitioner maintains that the appointing authority had already determined her removal prior to scheduling the hearing. Further, the petitioner asserts that, although she requested the departmental hearing to be held in abeyance, she should have been allowed to express her concerns at an informal pre-termination hearing. Petitioner contends that the appointing authority did not schedule the pre-termination hearing as it believes the petitioner’s opinions will not change the outcome of the matter. Moreover, the petitioner requests to be reinstated until she is at least provided with the opportunity for a pre-termination hearing.

In support, the petitioner provides certifications from Lieutenant Glenn Gaston from the Union City Police Department, who states that the Police Chief recited the contents of the PNDA and notice of immediate suspension to petitioner, and the Police Chief orally advised petitioner that the appointing authority would be seeking her removal. Gastor also indicates that petitioner was not advised of such information until the Police Chief advised her about the penalty being sought, and the Police Chief did not advise of the opportunity for a hearing with respect to her immediate suspension without pay.

## CONCLUSION

*N.J.A.C.* 4A:2-1.2(c) provides the following factors for consideration in evaluating petitions for interim relief:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm;
3. Absence of substantial injury to other parties; and
4. The public interest.

In reviewing this matter, it is not necessary to address the merits of the charges against the petitioner. The issue to be determined is whether the nature and seriousness of the charges support the necessity for an immediate suspension.

*N.J.S.A.* 11A:2-13 and *N.J.A.C.* 4A:2-2.5(a)1 provide that an employee may be suspended immediately without a hearing if the appointing authority determines

that the employee is unfit for duty or is a hazard to any person if allowed to remain on the job or that an immediate suspension is necessary to maintain safety, health, order, or effective direction of public services. Additionally, where the suspension is immediate, the PNDA must be served within five days following the immediate suspension.

*N.J.A.C. 4A:2-2.5(b)* provides, in pertinent part, that when an employee is suspended immediately and without pay, the employee must be apprised orally or in writing of why the suspension is sought, the charges and general evidence in support of the charges, and provided sufficient opportunity to review the charges and the evidence in order to respond to the charges before a representative of the appointing authority. The response may be oral or in writing, at the discretion of the appointing authority. In a prior case addressing this issue, *In the Matter of Anthony Recine* (MSB, decided March 10, 1998), it was found that the Township of Hamilton did not provide a proper pre-termination hearing since *Recine* was not made aware of the charges and the general evidence supporting the charges prior to being suspended.

In the present case, the charges in the PNDA are undoubtedly serious. If the petitioner, a Police Sergeant, was engaging in the alleged conduct that led to her arrest and being charged with DWI, refusal to submit to a Breathalyzer test, and failure to maintain lane, her continued employment would have negatively impacted the order and effective direction of public services and would have compromised the integrity of the Police Department. . . . As such, the petitioner's immediate suspension was warranted.

With respect to her argument that she was not afforded her due process rights, the record reflects that the petitioner was apprised orally and in writing that she was immediately suspended on February 19, 2021 and was provided the basis for her suspension. The petitioner also admits in this matter that she that she was accompanied by her union representatives at the time of the February 18, 2021 meeting, and the record reflects that the Police Chief advised her of the immediate suspension and provided her with the opportunity to respond. The fact that the petitioner requested that the departmental hearing be delayed pending disposition of the municipal court matter does not establish her contentions in this matter. The petitioner was served with the February 19, 2021 PNDA, charging her with conduct unbecoming a public employee, other sufficient cause, and violations of rules and regulations. The specification as indicated in the PNDA is the general evidence supporting the charges. The petitioner was provided with sufficient opportunity to respond. Although petitioner argues that her attorney was not present during the February 18, 2021 meeting, such does not change the outcome of the case, as the petitioner clearly acknowledges that her union representatives were present at the meeting and had the opportunity to respond. Moreover, the PNDA was served within five days after the petitioner was suspended and the appellant was clearly notified of

the charges against her orally and in writing. As such, the Commission is satisfied that no procedural violations occurred.

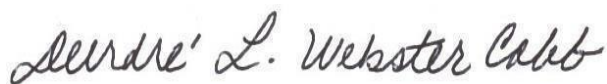
Other than her asserted procedural violations, the petitioner has not conclusively demonstrated that she will succeed in having the underlying charges dismissed and has not shown a clear likelihood of success on the merits. Given the serious nature of the charges, it is clear that the appointing authority met the standards for an immediate suspension enunciated in *N.J.A.C. 4A:2-2.5(a)1*. Moreover, the petitioner has not shown that she is in danger of immediate or irreparable harm if this request is not granted. While the Commission sympathizes with her financial situation, the harm that she is experiencing while awaiting her hearing is purely financial in nature, and as such, can be remedied by the granting of back pay should she prevail in her appeal. Moreover, the petitioner contends that the appointing authority would not be adversely affected if she were immediately returned to her position. However, the Commission does not find this argument persuasive. Based on the circumstances involved in the petitioner's alleged conduct, it would be harmful to the appointing authority, as well as the public at large, to allow an individual to be returned to employment without resolving the charges against her at a departmental hearing. In this regard, a law enforcement officer is held to a higher standard than a civilian public employee. See *Moorestown v. Armstrong*, 89 *N.J. Super.* 560 (App. Div. 1965), *cert. denied*, 47 *N.J.* 80 (1966), *In re Phillips*, 117 *N.J.* 567 (1990). Accordingly, the petitioner's request for interim relief is denied.

### ORDER

The Civil Service Commission orders that the petitioner's request for interim relief be denied.

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 30<sup>TH</sup> DAY OF JUNE, 2021



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