



## STATE OF NEW JERSEY

In the Matter of Malikul Aziz,  
Newark, Police Department

CSC DKT. NO. 2022-352  
OAL DKT. NO. CSV 07374-21

DECISION OF THE  
CIVIL SERVICE COMMISSION

ISSUED: MARCH 7, 2022 (NFA)

The appeal of Malikul Aziz, Police Officer, Newark, Police Department, 20 working day suspension, on charges, was before Administrative Law Judge Kimberly A. Moss (ALJ), who rendered her initial summary decision on January 25, 2022. Exceptions were filed on behalf of the appellant and on behalf of the appointing authority, and a reply to exceptions was filed on behalf of the appellant.<sup>1</sup>

Having considered the record and the exceptions, as well as the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on March 2, 2022, did not adopt the recommendation to reverse the 20 working day suspension. Rather, the Commission remanded the matter to the Office of Administrative Law (OAL).

DISCUSSION

The appellant, a Police Officer, was immediately suspended without pay on June 23, 2021, and received a Preliminary Notice of Disciplinary Action (PNDA) on that date, indicating various violations of departmental rules.<sup>2</sup> The specifications

<sup>1</sup> As the exceptions and reply were not instrumental in the Commission reaching its decision, they will not be specifically presented or discussed herein.

<sup>2</sup> The PNDA indicated the appellant was "indefinitely suspended June 23, 2021 without pay." This entry was incorrect, and just the first of a multitude of procedural errors committed by Newark in this matter. In this regard, an indefinite suspension can only be imposed when there are criminal charges that have been filed against an appellant. See *N.J.A.C. 4A:2-2.7*. Such a suspension cannot be imposed where there is merely a criminal investigation in process. Rather, the suspension is

underlying the charges listed on the PNDA indicated that the appellant allegedly posted material regarding a confidential investigation on Facebook. On July 22, 2021, a Final Notice of Disciplinary Action (FNDA) was issued indicating that the appellant received a 20 working day suspension spanning from June 24, 2021, to July 22, 2021. The appellant appealed this FNDA to the Commission and that suspension was transmitted to the Office of Administrative Law (OAL) for a hearing.

At the OAL, the ALJ did not proceed on the merits of the charges against the appellant. Rather, the ALJ issued an initial summary decision recommending dismissing the charges against the appellant for various procedural reasons. As the Commission is rejecting that recommendation, it will discuss each of the ALJ's reasons in conjunction with its reasons for rejecting those reasons.

*N.J.A.C. 4A:2-2.5* indicates, in pertinent part:

(a) An employee must be served with a Preliminary Notice of Disciplinary Action setting forth the charges and statement of facts supporting the charges (specifications), and afforded the opportunity for a hearing prior to imposition of major discipline, except:

1. 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 Preliminary Notice of Disciplinary Action with opportunity for a hearing must be served in person or by certified mail within five days following the immediate suspension.

2. An employee may be suspended immediately when the employee is formally charged with a crime of the first, second or third degree, or a crime of the fourth degree on the job or directly related to the job. See *N.J.A.C. 4A:2-2.7*.

(b) Where suspension is immediate under (a)1 and 2 above, and is without pay, the employee must first be apprised either orally or in writing, of why an immediate suspension is sought, the charges and general evidence in support of the charges and provided with 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.

(c) The employee may request a departmental hearing within

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properly termed as an immediate suspension without pay pursuant to *N.J.A.C. 4A:2-2.5(a)1*. For the reasons set forth later in this decision, this initial procedural violation, along with the numerous others, does not warrant the dismissal of the underlying charges.

five days of receipt of the Preliminary Notice. If no request is made within this time or such additional time as agreed to by the appointing authority or as provided in a negotiated agreement, the departmental hearing may be considered to have been waived and the appointing authority may issue a Final Notice of Disciplinary Action.

(d) A departmental hearing, if requested, shall be held within 30 days of the Preliminary Notice of Disciplinary Action unless waived by the employee or a later date as agreed to by the parties . . . .

One of the reasons for the ALJ's recommendation to reverse the suspension was that Newark did not hold the full departmental hearing within 30 days as required in *N.J.S.A. 40A:14-149* (and presumably also in violation of *N.J.A.C. 4A:2-2.5(d)*). *N.J.S.A. 40A:14-149*, the so-called "30-day rule" indicates that that if any member or officer of the police department or force shall be suspended pending a hearing as a result of charges made against him, such hearing, except as otherwise provided by law, shall be commenced within 30 days from the date of the service of the copy of the complaint upon him, in default of which the charges shall be dismissed and said member or officer may be returned to duty. In this regard, the ALJ found that the appellant did receive a "departmental hearing" on July 22, 2021, but that hearing did not address the merits of the charges. Rather, it was merely a "pretermination" hearing pursuant to *N.J.A.C. 4A:2-2.5(a)1* and (b) (also known as a "Loudermill" hearing, pursuant to *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985)). The appellant then had the opportunity for a "full" departmental hearing in November 2021,<sup>3</sup> which the ALJ determined was outside the 30-day requirement. The Commission disagrees.

There is apparently much confusion regarding this matter. An immediate suspension under *N.J.A.C. 4A:2-2.5(a)1* can only be imposed where the standard in that rule is met. In this regard, based on the specifications in this matter, which touch on Newark's ability to trust the appellant with confidential information, it is clear that the standard under *N.J.A.C. 4A:2-2.5(a)1* was met as the "effective direction of public services" could have been impacted if the appellant were allowed to remain on-duty. To impose this suspension without pay, per *N.J.A.C. 4A:2-2.5(b)*, an employee must be "apprised either orally or in writing, of why an immediate suspension is sought, [and] the charges and general evidence in support of the charges." In this case, Newark served the PNDA on the day it sought to immediately suspend the appellant. That PNDA indicated that the appellant was suspended as of that date without pay and included the charges **and the underlying specifications**. As such, that service satisfied *N.J.A.C. 4A:2-2.5(a)1*

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<sup>3</sup> That hearing was based again on the initial PNDA and included the same charges and specifications, and the subsequent FNDA again imposed the same 20 working day suspension over the same time period. The appellant also appealed that FNDA to the Commission. However, as this matter is ordering that the matter of his 20 working day suspension proceed on the merits, his appeal of that second FNDA was unnecessary and considered moot.

and (b), so long as the appellant was given the opportunity to respond. No formal proceeding or additional procedural due process was required to impose the immediate suspension at that time.<sup>4</sup> In other words, the hearing on July 22, 2021, should not have been a pretermination hearing, but rather, a hearing on the merits of the charges. Instead, that hearing apparently determined that the suspension time served was sufficient for the appellant's alleged infractions, even though that hearing was not on the merits.<sup>5</sup>

Regarding the 30-day rule, in *King v. Ryan*, 262 N.J. Super. 401 (App. Div. 1993), cert. denied, 134 N.J. 474 (1993), the Appellate Division recognized that not every violation of the 30-day rule set forth in N.J.S.A. 40A:14-149 mandates dismissal of the disciplinary charges. The court stated:

We recognize that the flexibility with which the apparently mandatory statutory thirty-day provision of N.J.S.A. 40A:14-149 has been invested by the courts proceeds from the need to accommodate the prompt dispositional rights of the suspended officer with the public's overriding interest in an appropriate response to allegations of police misconduct. That flexibility is not, however, congruent with inexcusable and egregious disregard of the officer's rights. *Id.* at 411.

*See also, In the Matter of Gideon Bernhard*, Docket No. A-1934-03T1 (App. Div. April 18, 2005); *In the Matter of Joseph Gallant* (MSB, decided June 12, 2001).

In this matter, the charges against the appellant should not be dismissed based on Newark's violation of the above statute. While procedural due process in the disciplinary process is a fundamental right for a Civil Service employee, only violations that are unduly prejudicial warrant the dismissal of charges without a

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<sup>4</sup> Although, the Commission has seen where appointing authorities, usually via a negotiated agreement, have more "formal" hearing-type procedures when imposing an immediate suspension. These proceedings should be promptly scheduled and implemented and only delayed based on the agreement of the parties. Further, where such a process is in place, any immediate suspension prior to a pretermination hearing should be with pay and only converted to without pay after the hearing. The Commission also notes that the hearing requested in N.J.A.C. 4A:2-2.5(c) and undertaken in N.J.A.C. 4A:2-2.5(d) is **not** the pretermination hearing, but rather, the departmental hearing on the merits.

<sup>5</sup> In this regard, once Newark determined that the immediate suspension should be terminated, it needed to take one of the following actions. Issue a FNDA reversing the immediate suspension, returning the appellant to work and reimbursing him with back pay for the time period he was immediately suspended, or, as here, if it believed the underlying charges were meritorious, it could have returned the appellant to work and thereafter **promptly** scheduled a full departmental hearing on the merits of the charges. If the charges were ultimately sustained on the merits, it could have then issued a FNDA upholding the 20 working day suspension already served. It should not have, as it did here, issue the July 22, 2021, FNDA upholding the suspension where the merits of the underlying charges were not adjudicated. The Commission can only surmise that the reason Newark did so is based on its very first procedural error terming the initial suspension in the PNDA as an "indefinite" suspension, which, ultimately requires the issuance of a FNDA.

determination on the sufficiency of those charges, especially where those charges are serious in nature. In this case, while Newark did not hold the hearing per the above time frame, it did timely issue a complete PNDA informing the appellant of the charges and specifications. Further, it apparently attempted to remedy its violation by scheduling the hearing after it had already imposed the proposed suspension based on the procedurally botched immediate suspension.<sup>6</sup> While these violations are puzzling, most importantly, once the appellant initially appealed to the Commission, it transmitted the matter for a hearing on the merits in August 2021, even before the appointing authority's attempted remediation. In this regard, procedural deficiencies at the departmental level which are not significantly prejudicial to an appellant are deemed cured through the *de novo* hearing received at the OAL. See *Ensslin v. Township of North Bergen*, 275 N.J. Super. 352, 361 (App. Div. 1994), *cert. denied*, 142 N.J. 446 (1995); *In re Darcy*, 114 N.J. Super. 454 (App. Div. 1971).

The ALJ also found that Newark was in violation of N.J.S.A. 40A:14-118, which relates to, *inter alia*, the line of authority relating to police functions. In this regard, the ALJ found that Newark's Police Director was not the proper individual to issue and sign the PNDA and FNDA issued to the appellant. Rather, she found that it was the Police Chief who was the proper authority.<sup>7</sup> Although the ALJ did not explicitly indicate that the charges should be dismissed on this basis, she did include this violation as part of her decision to dismiss the charges and reverse the suspension. As such, the Commission can only conclude that the ALJ also relied on this alleged violation in making her ultimate recommendation. The Commission need not make a substantive determination on this issue. Initially, unlike N.J.S.A. 40A:14-149, which explicitly provides for dismissal of disciplinary charges if violated, N.J.S.A. 40A:14-118 provides no explicit remedies for its violation. As such, it does not necessarily follow that a violation of N.J.S.A. 40A:14-118 requires the dismissal of disciplinary charges. Perhaps if the violation was purposeful or it was demonstrated that the improper authority was issuing such charges with invidious intent or for the sole purpose of bypassing the proper authority, such a remedy could be countenanced as that would evidence substantial prejudice to the employee. However, absent such a demonstration, it appears that the proper remedy for the issuance of such arguably "defective" charges would be to allow that violation to be corrected by the appointing authority. To find otherwise would be putting form over substance. Further, as indicated above, such a procedural violation, absent a showing of actual prejudice, would be considered cured via the Commission's granting of the *de novo* hearing on the merits of the charges.

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<sup>6</sup> Interestingly, the record indicates that the appellant waived his November 2021 departmental hearing on the merits.

<sup>7</sup> In its exceptions, Newark disputes this finding and points to a 2016 ordinance giving the Police Director the authority to initiate and impose discipline as well as a recent New Jersey Supreme Court case supporting that proposition. See *Fraternal Order of Police, Newark Lodge No. 12 v. City of Newark*, 244 N.J. 75 (2020). The appellant's reply provides rebuttal to these arguments.

Finally, the ALJ indicated that the charges should be dismissed pursuant to *N.J.A.C.* 40A:14-147, the so-called “45-day rule.” The relevant portions of *N.J.S.A.* 40A:14-147 provide that “a complaint charging a violation of the [police department’s] internal rules and regulations established for the conduct of a law enforcement unit shall be filed no later than the 45th day after the date on which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based.” This statute is designed to protect police officers from an appointing authority unduly and prejudicially delaying the imposition of disciplinary action. However, the statute does not prohibit an appointing authority from doing a proper investigation into a matter to determine whether disciplinary charges are necessary and appropriate. The fact that such normal and necessary investigation may span a period of time, which may exceed 45 days, does not automatically call for the dismissal of such charges. Rather, for the purposes of *N.J.S.A.* 40A:14-147, the charges must be brought within 45 days of the “person filing the complaint” obtaining sufficient information to bring such charges.

In this matter, the Commission rejects the ALJ’s determination that the 45-day rule was violated. What the ALJ does not consider is that the original June 23, 2021, PNDA issued to the appellant listed all of the underlying charges and specifications that ultimately were sustained on both the original July 22, 2021 FNDA, as well as the subsequent nearly identical FNDA issued after the November 2021 departmental hearing. As such, it is clear that Newark issued the charges prior to the expiration of the 45-day period. In fact, the charges were issued apparently even before it had completed its own internal investigation after it was informed that no criminal charges were being filed. While this may not be advisable, it certainly does not equate to a violation of *N.J.S.A.* 40A:14-147.

While this decision may appear to be unfairly rewarding Newark for its slew of procedural violations, none of these violations significantly impacted the most important factor to be cognizant of where an appointing authority seeks to impose major discipline on a Civil Service employee. That is, that the employee received sufficient due process regarding the charges and had the ability to substantively challenge those charges on the merits. In this case, while the numerous procedural violations are concerning, they did not unduly prejudice the appellant, and as indicated above, are cured via the granting of a *de novo* hearing.<sup>8</sup> As such, there is no procedural basis to reverse the suspension as found by the ALJ. Finally, the Commission cautions Newark in the future to properly follow the provisions of *N.J.A.C.* 4A:2-2.1, *et seq.*, in imposing major discipline on its employees in the future. Its failure to do so may subject it to dismissal of the charges, or other remedies, as well as fines and penalties pursuant to *N.J.A.C.* 4A:10-1.1 and

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<sup>8</sup> The Commission notes that it is always hesitant to dismiss disciplinary charges against an employee without a substantive hearing on the merits. As it is an appointing authority’s burden to sustain those charges, should it fail to do so at such a hearing, an employee is afforded full restorative remedies. With that said, the Commission would not hesitate to dismiss charges on procedural grounds where appropriate.

N.J.A.C. 4A:10-2.1.

Accordingly, this matter is remanded to the OAL for a hearing on the merits of the charges.

ORDER

The Civil Service Commission remands the appeal of Malikul Aziz to the Office of Administrative Law for further proceedings.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 2<sup>ND</sup> DAY OF MARCH, 2022



Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
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Attachment



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

**SUMMARY DECISION**

OAL DKT NO. CSV 07374-21

AGENCY DKT NO 2022-352

**IN THE MATTER OF MALIKUL AZIZ  
NEWARK POLICE DEPARTMENT,**

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**Albert J. Seibert, Esq.**, for petitioner (Law Offices of Steven Varano, P.C.,  
attorneys)

**Hugh A. Thompson, Esq.**, for respondent, (City of Newark- Department of Law,  
attorneys)

Record Closed: January 18, 2022

Decided: January 25, 2022

**BEFORE KIMBERLY A. MOSS, ALJ:**

Appellant, Malikul Aziz (Aziz or appellant), appeals the suspension without pay by respondent, Newark Police Department (NPD), pending a hearing on charges of disobedience of orders, conduct in public and police image.

On June 23, 2021, NPD served Aziz with a Preliminary Notice of Disciplinary Action (PNDA). His charges stem from a social media post on the Newark FOP Facebook page. The FOP Facebook page is a private page for police officers.



On July 26, 2021, a Final Notice of Disciplinary Action (FNDA) of the Loudermill hearing was served and Aziz requested an appeal. The appeal was filed with the Office of Administrative Law (OAL) on August 30, 2021. Appellant filed a motion to for summary decision on December 20, 2021. Respondent filed opposition to the motion on January 10, 2022. Oral Arguments were held on January 18, 2022.

### **FACTUAL DISCUSSION**

On October 7, 2008, following a lawsuit between the Superior Officers' Association and the City of Newark (Newark), a Consent Order was entered which gave the Chief of Police the power and authority to suspend officers with or without pay, administer, and enforce rules and regulations, impose discipline on officers in the department and issue PNDA's.

Subsequent to the Consent Order, the City of Newark removed the position of Chief of Police. On June 3, 2009, General Order 07-06 was issued granting the Police Director of Newark, the sole power and authority to suspend officers in NPD. This conflicted with the Consent Order of 2008. On March 23, 2010, a Consent Order was issued vacating the October 7, 2008, Consent Order. The March 23, 2010, Consent Order stated that in the event that the position of Chief of Police was re-established, the October 7, 2008, Consent Order would automatically be reinstated. Mayor Ras Baraka designated the Director of Public Safety to be the to be the appropriate authority concerning all matters concerning NPD. In July 2011, the position of Chief of Police for NPD was re-established by the department, as such the 2008 Consent Order was automatically reinstated.

Newark has a Police Chief and a Director of Public Safety. The PNDA against Aziz, which was served on Aziz on June 23, 2021, was signed by Newark Director of Safety Brian O'Hara.

On June 23, 2021, NPD referred the matter to the Essex County Prosecutor's Office (ECPO) to access potential criminal conduct. On June 24, 2021, Aziz submitted a request for a disciplinary hearing. On July 12, 2021, Aziz requested an update as to the date and time of the disciplinary hearing. On July 15, 2021, ECPO notified NPD that

they were not pursuing criminal charges against Aziz. On July 16, 2021, Aziz was advised that the departmental hearing was scheduled for July 19, 2021. The hearing was adjourned to July 22, 2021. The hearing addressed whether Aziz would return to work with pay pending the investigation of NPD (Loudermill hearing). The merits of the underlying allegations were not addressed at that time.

A FDNA which Aziz was served with on July 26, 2021, sustained the charges against him. However, the FNDA of July 26, 2021, only references whether Aziz would return to work with pay pending the underlying investigation. The following day Personnel Order 2021-0387 was issued reinstating Aziz effective July 22, 2021.

On July 30, 2021, NPD concluded its investigation of the underlying charges against Aziz. On August 9, 2021, Aziz filed an appeal of the FNDA. Newark stayed the underlying matter because Aziz had filed an appeal of the Loudermill FDNA. Newark did not produce any regulation that would allow it to unilaterally stay the underlying matter.

After the case was sent to OAL, a prehearing conference was held on September 30, 2021. On October 14, 2021, a PNDA was served on Aziz to address the merits of the charges. A hearing on the merits was scheduled for November 14, 2021. Aziz waived the November 14, 2021, hearing.

### **LEGAL ANALYSIS AND CONCLUSION**

Appellant seeks to summarily dismiss the charges. The rules governing motions for summary decision in an OAL matter are embodied N.J.A.C. 1:1-12.5. These provisions mirror the language of Rule 4:46-2 and the New Jersey Supreme Court's decision in Judson v. Peoples Bank and Trust Company of Westfield, 17 N.J. 67 (1954). Under N.J.A.C. 1:1-12.5(b), the determination to grant summary judgment should be based on the papers presented as well as any affidavits, which may have been filed with the application. In order for the adverse, i.e., the non-moving party to prevail in such an application, responding affidavits must be submitted showing that there is indeed a genuine issue of fact, which can only be determined in an evidentiary

proceeding. The Court in Brill v. Guardian Life Insurance Company of America, 142 N.J. 520, 523 (1995), set the standard to be applied when deciding a motion for summary judgment. Therein the Court stated:

The determination whether there exists a genuine issue with respect to a material fact challenged 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.

N.J.S.A. 40A:14-118 provides:

The governing body of any municipality, by ordinance, may create and establish, as an executive and enforcement function of municipal government, a police force, whether as a department or as a division, bureau, or other agency thereof, and provide for the maintenance, regulation, and control thereof. Any such ordinance shall, in a manner consistent with the form of government adopted by the municipality and with general law, provide for a line of authority relating to the police function and for the adoption and promulgation by the appropriate authority of rules and regulations for the government of the force and for the discipline of its members. The ordinance may provide for the appointment of a chief of police and such members, officers and personnel as shall be deemed necessary, the determination of their terms of office, the fixing of their compensation and the prescription of their powers, functions, and duties, all as the governing body shall deem necessary for the effective government of the force. Any such ordinance, or rules and regulations, shall provide that the chief of police, if such position is established, shall be the head of the police force and that he shall be directly responsible to the appropriate authority for the efficiency and routine day to day operations thereof, and that he shall, pursuant to policies established by the appropriate authority:

- a. Administer and enforce rules and regulations and special emergency directives for the disposition and discipline of the force and its officers and personnel;
- b. Have, exercise, and discharge the functions, powers, and duties of the force;
- c. Prescribe the duties and assignments of all subordinates and other personnel;
- d. Delegate such of his authority as he may deem necessary for the efficient operation of the force to be exercised under his direction and supervision; and
- e. Report at least monthly to the appropriate authority in such form as shall be prescribed by such authority on the operation of the force during

the preceding month and make such other reports as may be requested by such authority.

As used in this section, "appropriate authority" means the mayor, manager, or such other appropriate executive or administrative officer, such as a full-time director of public safety, or the governing body or any designated committee or member thereof, or any municipal board or commission established by ordinance for such purposes, as shall be provided by ordinance in a manner consistent with the degree of separation of executive and administrative powers from the legislative powers provided for in the charter or form of government either adopted by the municipality or under which the governing body operates.

In this matter, NPD has a Police Chief. The City of Newark also has a Public Safety Director, who is designated as the appropriate authority for all matters concerning NPD. In Gaunt v. Mayor and Council of City of Bridgeton 194 N.J. Super.468 (App.Div 1984) The Police Chief filed an action alleging that the Public Safety Director was interfering with the day to day functions of the police department. In that matter, the Mayor amended the rules and regulations of the City of Bridgeton's Division of Police to provide that the Director of Police and Fire, the Business Administrator, the members of the City Council, the Mayor or an Administrative Law Judge are authorized to act as hearing officers with regard to police disciplinary matters. Plaintiff contends that this amendment to the rules and regulations of the Division of Police is null and void because the amendment to N.J.S.A. 40A:14-118 authorizes the Chief of Police to act as hearing officer. ID at 490-491.

The Court stated, "We disagree since N.J.S.A. 40A:14-118a merely authorizes the Chief of Police to "[a]dminister and enforce rules and regulations . . . for the disposition and discipline of the force and its officers and personnel. . . ." Nothing contained within this statute or the ordinance and regulations governing the City of Bridgeton's Police Division gives plaintiff the authority to act as hearing officer in police disciplinary matters. It should be noted that N.J.S.A. 40:69A-43(d) gives department heads the authority to remove subordinate officers and employees within their respective department.

In this matter there is a Consent Order. Appellant argues that the Consent Order of August 7, 2008, In the Matter of Superior Officers" Association and the City of

Newark, gives the Police Chief the power and authority to issue PNDA's. The Consent Order was signed on October 7, 2008. Part of the Consent Order stated that "The Chief of Police will issue Preliminary Notices of Disciplinary Action. After this Newark removed the position of chief of police. On March 23, 2010, a Consent Order was issued vacating the October 7, 2008 Consent Order. The March 23, 2010, Consent Order stated that in the event that the position of chief of police was re-established, the October 7, 2008, consent order would automatically be reinstated. (emphasis supplied) The Chief of Police position was re-established in July 2011, therefore the October 7, 2008, Consent Order was automatically reinstated. In this matter the PNDA was issued by the police director O'Hara in violation of the Consent Order.

I **CONCLUDE** that the Consent Order was violated when Police Director O'Hara issued the PNDA to Aziz.

N.J.S.A. 40A:14-149 (30 day rule) provides:

If any member or officer of the police department or force shall be suspended pending a hearing as a result of charges made against him, such hearing, except as otherwise provided by law, shall be commenced within 30 days from the date of the service of the copy of the complaint upon him, in default of which the charges shall be dismissed and said member or officer may be returned to duty.

Aziz was suspended on June 23, 2021., NPD referred the matter to the Essex County Prosecutor's Office (ECPO) to assess potential criminal conduct on that date. On July 15, 2021, ECPO notified NPD that they were not pursuing criminal charges against Aziz.

On July 16, 2021, Aziz was advised that the departmental hearing was scheduled for July 19, 2021. The hearing was adjourned to July 22, 2021. The July 22, 2021, hearing did not address the merits. It addressed whether Aziz would return to work with pay pending the investigation of NPD (Loudermill hearing). A FDNA was issued on July 26, 2021, regarding the Loudermill hearing. On July 30, 2021, NPD completed its investigation on the merits. Aziz filed an appeal of the August 9, 2021. Newark stayed its proceedings on the merits because Aziz filed an appeal. Newark did not provide any rule or regulation that allowed it to unilaterally stay matters. A PNDA on

the merits was issued on October 14, 2021, and a hearing was scheduled for November 14, 2021.

Thirty days after the complaint was served on Aziz would have been July 23, 2021. Although the Loudermill hearing was held on July 22, 2021, it did not address the merits. The hearing on the merits was scheduled for November 14, 2020, four-and one-half months after the date of suspension and three months after NPD completed its investigation on July 30, 2021.

**I CONCLUDE** NPD violated N.J.S.A. 40A:14-149 by not having a hearing on the merits within thirty days of service of the charges

N.J.S.A. 40A:14-147 provides:

Except as otherwise provided by law, no permanent member or officer of the police department or force shall be removed from his office, employment or position for political reasons or for any cause other than incapacity, misconduct, or disobedience of rules and regulations established for the government of the police department and force, nor shall such member or officer be suspended, removed, fined or reduced in rank from or in office, employment, or position therein, except for just cause as hereinbefore provided and then only upon a written complaint setting forth the charge or charges against such member or officer. The complaint shall be filed in the office of the body, officer or officers having charge of the department or force wherein the complaint is made, and a copy shall be served upon the member or officer so charged, with notice of a designated hearing thereon by the proper authorities, which shall be not less than 10 nor more than 30 days from date of service of the complaint.

A complaint charging a violation of the internal rules and regulations established for the conduct of a law enforcement unit shall be filed no later than the 45th day after the date on which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based. The 45-day time limit shall not apply if an investigation of a law enforcement officer for a violation of the internal rules or regulations of the law enforcement unit is included directly or indirectly within a concurrent investigation of that officer for a violation of the criminal laws of this State. The 45-day limit shall begin on the day after the disposition of the criminal investigation. The 45-day requirement of this paragraph for the filing of a complaint against an officer shall not apply to a filing of a complaint by a private individual.

A failure to comply with said provisions as to the service of the complaint and the time within which a complaint is to be filed shall require a dismissal of the complaint.

The law enforcement officer may waive the right to a hearing and may appeal the charges directly to any available authority specified by law or regulation, or follow any other procedure recognized by a contract, as permitted by law.

In this matter, NPD knew that ECPO was not bringing criminal charges against Aziz on July 15, 2020. Forty-five days from this date would have been August 29, 2021. NPD concluded its investigation on July 30, 2021. Forty-five days from that date would have been September 15, 2021. The PNDA on the merits was served on Aziz on October 14, 2021, and the hearing on the merits was scheduled for November 14, 2021. There was no regulation cited by NPD for their staying scheduling there hearing from August 9, 2021, when Aziz filed the appeal to November 14, 2021, when the hearing on the merits was scheduled.

I **CONCLUDE** NPD violated N.J.S.A. 40A:14-147 by not having Aziz hearing within forty-five days after the disposition of the criminal investigation of ECPO on July 15, 2021

### **ORDER**

Accordingly, it is **ORDERED** that appellant's motion to dismiss the charges is **GRANTED**. It is further **ORDERED** that Appellant be and is hereby entitled to back pay.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service 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.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

January 25, 2022

\_\_\_\_\_  
DATE



\_\_\_\_\_  
KIMBERLY A. MOSS, ALJ

Date Received at Agency:

January 25, 2022

Date Mailed to Parties:  
ljb

January 25, 2022