



**STATE OF NEW JERSEY**

In the Matter of Harold Robinson,  
City of Passaic

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

CSC Docket No. 2022-556

Request for Interim Relief

**ISSUED: JULY 5, 2022 (HS)**

Harold Robinson, a Police Officer with the City of Passaic, represented by Charles J. Sciarra, Esq., petitions the Civil Service Commission (Commission) for interim relief concerning a Preliminary Notice of Disciplinary Action.

As background, on May 26, 2020, the appointing authority issued the petitioner a Preliminary Notice of Disciplinary Action (PNDA), charging him with incompetency, inefficiency, or failure to perform duties; insubordination; conduct unbecoming a public employee; neglect of duty; misuse of public property, including motor vehicles; and other sufficient cause. Specifically, it was alleged that the petitioner improperly used a body worn camera and improperly traveled through multiple intersections against red traffic lights. The PNDA proposed, as the penalty, a suspension of 30 to 90 days. A departmental hearing was held, and the Hearing Officer issued a decision absolving the petitioner of all discipline.

In his request, the petitioner asserts that despite multiple requests for a Final Notice of Disciplinary Action (FNDA), one was never provided. In support, the petitioner provides, among other documents, copies of those requests dated September 18, 2020, July 2, 2021, July 9, 2021, and August 16, 2021 respectively.

In response, the appointing authority, represented by Peter P. Perla, Esq., explains that it exercised its discretion to reject the Hearing Officer’s decision. Its labor counsel then engaged the petitioner’s attorney to see if the parties could settle the disciplinary penalty. Labor counsel made clear that the appointing authority was willing to settle for a suspension in the range of approximately five days, but the petitioner never countered. Thus, according to the appointing authority, it issued the petitioner a Notice of Final Minor Disciplinary Action (NFMDA) on April

12, 2021 for a five-day suspension in order to bring finality to the matter. The appointing authority maintains that the petitioner refused to sign the NFMDA, so the serving officer signed it on his behalf, noting “Did not sign,” meaning that the petitioner refused to sign for its receipt. The appointing authority further represents that the petitioner’s requests for the FNDA were all sent to labor counsel at counsel’s *former* firm, and the petitioner was aware, as of March 2021, that counsel had moved to a new firm while retaining the appointing authority as a client. Also, a new individual assumed the role of President of PBA Local 14, the labor union that represents Police Officers, on June 1, 2021. That individual, according to the appointing authority, was aware, when he became President, that the petitioner had been issued the minor discipline of a five-day suspension.

The appointing authority contends that the petitioner’s interim relief request is deficient. It notes that the petitioner has not provided a certified statement about whether he had any knowledge of the outcome in his disciplinary matter, such as being served with the NFMDA. The appointing authority insists that the petitioner clearly was served on April 12, 2021. The petitioner’s entire position, in the appointing authority’s view, rests on the demonstrably false point that he was not issued appropriate final disciplinary closing documentation. In support, the appointing authority submits a copy of the NFMDA and other documents.

In reply, the petitioner argues that although the Hearing Officer was unilaterally selected and paid for by the appointing authority and these cases usually go against the employee, he still prevailed before the Hearing Officer. The petitioner questions where the FNDA is; whether it has been sent to this agency; whether it has been signed for; and whether there has been any proof of service. The petitioner argues that an FNDA has to be filed with this agency but that it is too late to do so now. He alleges that the appointing authority took no action and that his case should be dismissed.

In reply, the appointing authority argues that the petitioner’s reply should be disregarded because it was filed too late. Nevertheless, the appointing authority notes that this agency’s FNDA form, DPF-31B, which does state that a copy must be distributed to this agency, only applies to major discipline. However, this matter involves a minor disciplinary action that is not appealable to the Commission because a municipal, not State, employee is involved. The appointing authority reiterates that it attempted to amicably settle this matter with the petitioner prior to his interim relief request and issued the petitioner minor discipline only when it could not do so.

## CONCLUSION

Initially, it is noted that the appointing authority contends that the petitioner provided an untimely reply. However, there is no jurisdictional statutory timeline within which a party is required to reply. *See, e.g., In the Matter of Michael Compton* (MSB, decided May 18, 2005). In addition, in order for the Commission to make a reasoned decision in a matter, it must review a complete record. *See, e.g., In the Matter of James Burke* (MSB, decided June 22, 2005). Moreover, the appointing authority had the opportunity to reply and in fact did so. As such, there is no basis to disregard the petitioner’s reply or any submission.

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

*N.J.S.A.* 11A:2-16 provides that if a State employee receives a suspension or fine of five days or less, the employee may request review by the Commission under standards and procedures established by the Commission or appeal pursuant to an alternate appeal procedure where provided by a negotiated contract provision. If an employee of a political subdivision receives a suspension or fine of five days or less, the employee may request review under standards and procedures established by the political subdivision or appeal pursuant to an alternate appeal procedure where provided by a negotiated contract provision. *N.J.A.C.* 4A:2-3.1(a) provides that minor discipline is a formal written reprimand or a suspension or fine of five working days or less. *N.J.A.C.* 4A:2-3.1(d) provides that *N.J.A.C.* 4A:2-3 (Minor Discipline and Grievances) shall not apply to local service, where an appointing authority may establish procedures for processing minor discipline and grievances. *N.J.A.C.* 4A:2-3.1(g) provides that *N.J.A.C.* 4A:2-3 shall not be utilized to review a matter exclusively covered by a negotiated labor agreement.

*N.J.A.C.* 4A:2-2.9(b) provides that minor discipline matters will be heard by the Commission or referred to the Office of Administrative Law for a hearing before an Administrative Law Judge for an employee's last suspension or fine for five working days or less where the aggregate number of days the employee has been suspended or fined in a calendar year, including the last suspension or fine, is 15 working days or more, or for an employee's last suspension or fine where the employee receives more than three suspensions or fines of five working days or less in a calendar year.

A review of this matter finds that the Commission has no jurisdiction to address the merits of the petitioner's discipline in any respect because the proceedings against the petitioner resulted in the imposition of a five-day suspension—*minor* discipline. See *N.J.A.C.* 4A:2-3.1(a). Minor disciplinary actions taken against county or municipal government employees are not reviewable by the Commission since the Legislature has limited such reviews to employees of State service. See *N.J.S.A.* 11A:2-16. Moreover, there is no evidence in the record that the petitioner had any other discipline in 2021.<sup>1</sup> And while the petitioner initially filed

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<sup>1</sup> If there was no mechanism available to the petitioner to pursue a minor disciplinary action under standards and procedures established by the jurisdiction or by a negotiated labor agreement, the petitioner's recourse was to seek

the instant request for interim relief contending that the appointing authority never issued him an FNDA, the appointing authority, in response, supplies a copy of the petitioner's NFMDA. The appointing authority further indicates that the NFMDA was issued to the petitioner, but the petitioner refused to sign for it. The petitioner does not substantively refute those points, and it is clear from the record that the petitioner was served with the NFMDA.

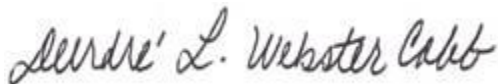
Notwithstanding the Commission's lack of jurisdiction to address the petitioner's discipline on its merits, the Commission adds the following comments regarding other arguments raised by the petitioner. The petitioner highlights that he won before the appointing authority's unilaterally selected and paid-for Hearing Officer. However, not only is the appointing authority permitted to designate the representative before whom the departmental hearing is to be held, *see N.J.S.A. 11A:2-13* (employee to have opportunity for hearing before the appointing authority or its designated representative), Civil Service law does not require that an appointing authority accept a Hearing Officer's recommendation. Rather, *N.J.A.C. 4A:2-2.6(d)* states, in pertinent part, that the *appointing authority* shall make a decision on the charges. *See also, N.J.S.A. 11A:2-14*. Therefore, it is implicit in this regulation that the discretion rests with the appointing authority to either accept or reject a Hearing Officer's recommendation. *See In the Matter of Devon Marshall* (MSB, decided December 7, 2005). Additionally, the petitioner suggests that the Commission has the power to dismiss his discipline on the basis that the appointing authority did not file a copy of the NFMDA with this agency. However, he points to no authority that would grant the Commission such power.

### ORDER

Therefore, it is ordered 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 29<sup>TH</sup> DAY OF JUNE 2022




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