



STATE OF NEW JERSEY

In the Matter of Nichua Liaci,
Warren County

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

CSC Docket No. 2022-3147

Request for Interim Relief

ISSUED: JULY 25, 2022 (SLK)

Nichua Liaci, a County Correctional Police Sergeant, with Warren County (County), represented by Salvatore Bellomo, Esq., petitions the Civil Service Commission (Commission) for interim relief of her immediate suspension without pay, effective May 24, 2022.

By way of background, on December 18, 2021, Liaci participated in a charity boxing event held at a local middle school. On December 23, 2021, County Correctional Police Officer, K.N. submitted an internal complaint alleging that Liaci engaged in harassment, threats of violence, unprofessionalism and a hostile work environment due to Liaci's actions toward her at the boxing event, which led to the County immediately suspending Liaci with pay on that same date pending an investigation. Further, on January 3, 2022, Liaci was served with a Preliminary Notice of Disciplinary Action (PNDA) indicating that she was immediately suspended for conduct unbecoming a public employee and other sufficient cause pending the conclusion of any criminal and internal investigations. On or about April 27, 2022, the County's internal investigation was concluded. Thereafter, on May 18, 2022, the County issued an amended PNDA seeking Liaci removal for conduct unbecoming a public employee and other sufficient cause. Specifically, the County indicated that at the end of Liaci's bout at the charity boxing event in question, she shouted expletives from inside the ring and in full view of witnesses from both the public and members of the law enforcement community and displayed her middle finger from the gym floor towards the bleachers that were full of spectators where K.N. was the target of the language and hand gestures. Several of K.N.'s family members also saw the hand gestures. After initially leaving the gym, approximately one minute later, Liaci

returned and engaged with K.N. and her family with lewd, inappropriate language while Liaici and her family were shouting from the gym floor. This led to event security and off-duty police law enforcement to escort Liaici and her family from the gymnasium. However, Liaici continued to engage with K.N.'s husband in the lobby by making disparaging remarks to him about K.N. Additionally, Liaici continued verbally engaging with the K.N. family by walking behind them to their respective vehicles. The County indicated that both school and private video showed that Liaici engaged in inappropriate behavior for the public's view, including, but not limited to her calling K.N. a "whore" and "slut." The PNDA describes the specific profanity and inappropriate language and gestures that were directed at K.N. and/or her family.

Moreover, on May 18, 2022, the County's issued correspondence to Liaici to notify her that it was considering converting her suspension with pay to one without pay pending a hearing on the merits and advising her to submit a written response regarding whether an immediate suspension was necessary. On May 19, 2022, the County sent Liaici's counsel its internal affairs report, applicable County Corrections' rules and regulations, County personnel policies, labor contract, prior disciplinary history and a witness list related to this matter. On May 20, 2022, Liaici's counsel responded, "[t]here is nothing to suggest that an immediate suspension without pay is necessary to maintain safety, health, order or effective direction of public services" and "Sgt. Liaci has been suspended since the original PNDA, with pay and there have been no issues involving Sgt. Liaci in either her personal capacity or as a member of the Corrections Department." Liaici also requested that a hearing be held within 30 days. On May 24, 2022, the County issued a "Final Notice of Disciplinary Action" (FNDA) converting her suspension with pay to without pay pending the outcome of the departmental hearing.¹ On June 1, 2022, Liaici filed the subject request for interim relief.

In Liaici's request, she argues that she will succeed on the merits as she had every right to attend the charity boxing event as she was a participant. However, Liaici presents that K.N. was not a participant and believes that K.N. was scheduled to work at the jail on the night of the incident, but took off to attend the event so that she could harass her. She claims that according to the witness statements of the Deputy Warden, while Liaici was in the ring, K.N. was shouting at her and rooting aggressively for her opponent. Liaici presents that the investigation revealed that K.N. and not her, was the aggressor. She indicates that the investigation indicated that she stepped away and went to the locker room while K.N. continued to engage her by going into the locker room. Additionally, she states that K.N. took a picture of Liaici's opponent presumably to continue a rumor that was taking place in a very hostile work environment for Liaici. Also, Liaici presents that K.N. waited for her outside of the school while there were no other parties and Liaici walked away and filed a criminal complaint against K.N. for harassment. Further, she states that K.N.

¹ The rider attached to the FNDA indicates that Liaici was removed. However, the FNDA and the record indicates that she has been suspended and not removed.

had a history of harassment towards her, which the County was aware of, but never intervened. Liaci states that K.N. filed several disciplinary complaints against her, which were determined to be unfounded and when Liaci complained, she was told to “let it go” and “not file,” essentially allowing harassment to continue against her. Moreover, the County’s investigation revealed that Liaci was the target of harassment and a hostile work environment and witnesses indicated that several jail employees came to the event to specifically harass her. She presents that she has worked at the jail for 22 years and her lack of disciplinary history shows that she does not have a propensity for violence and she was able to control herself physically and not engage in violence even though there was a highly charged altercation. Moreover, Liaci claims that the general public thought her giving the middle finger was part of the show and, therefore, her conduct was not interpreted as conduct unbecoming by the public. Also, she states that due to the high noise level of the event, witnesses indicated that they could not hear what was being said and video indicates that the commentators responded as if this was part of the show.

Liaci asserts that she will suffer immediate and irreparable harm if relief is not granted as she is without income for an indefinite future. She reiterates that she was protecting herself and her family from verbal attack at an event where she was placed in an aggressive state by the Department. Liaci states that even though she did not get physical with K.N. and there was no actual harm to the public, she was still suspended without pay. She asserts that although she is being blamed for the incident, she was the victim and to continue her suspension without pay sets a precedent in the department that creates irreparable harm to her and other officers. Also, Liaci argues that there is not threat of substantial injuries to other parties if this request is granted as the Department has demonstrated that no one is afraid of her or threatened by the incident as most people were just confused. She notes that the incident did not take place while on duty or in uniform and she proved that she can restrain herself despite her husband and child being attacked and after being called a racial slur. Liaci argues that the public is best served if she is afforded a fair investigation and due process, which was not the case here, and she is not a threat to anyone in the department and should remain paid pending the investigation.

In response, the County, represented by J. Andrew Kinsey, Esq., argues that Liaci failed to demonstrate a clear likelihood of success on the merits as the County has met its burden to convert her suspension with pay to a suspension without pay pending a departmental hearing under *N.J.A.C. 4A:2-2.5(a)*. Further, the County presents that contrary to her statements that there is no evidence that her immediate suspension was necessary to maintain safety, health, order or effective direction of public services completely ignores multiple witness statements, cell phone videos, and her own admission as to engaging in improper conduct towards a subordinate officer. It contends that the investigation shows that she, as a superior officer, cannot be permitted to carry a gun and supervise officers who guard the residents of the jail, and to allow her to do so would subject it to liability. The County cites case law that

have found that immediate suspensions have been justified for law enforcement officers. Further, it asserts that Liaci's conduct potentially could be considered worse than a "road rage" case where the Commission found that an immediate suspension was justified as her rage was directed at a subordinate officer and members of her family at a charity event before members of the public, which was clearly unbecoming behavior. The County contends that Liaci has not suffered immediate or irreparable harm as the time frame for the current suspension without pay pending the departmental hearing is likely to be minimal. Further, it notes that she will receive back pay if she ultimately prevails. Additionally, the County states that her behavior demonstrates that she could have a lapse in judgment that could cause substantial injury to others at the jail. Finally, it argues that the public trust in law enforcement would be diminished if her relief is granted because it would imply that the County condones or tolerates misbehavior.

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.

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. *N.J.A.C.* 4A:2-2.5(b) states that where suspension is immediate 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.

Initially, it is noted that although the County issued a "FNDA" on May 24, 2022, a review of the record indicates that this should have been a second amended PNDA that converted Liaci's suspension with pay to a suspension without pay. However, this *de minimus* violation does not merit any remedy.

Initially, the information provided in support of the instant petition does not demonstrate a clear likelihood of success on the merits. A critical issue in any disciplinary appeal is whether or not the petitioner's actions constituted wrongful conduct warranting discipline. The Commission will not attempt to determine such a

disciplinary appeal on the written record without a full plenary hearing before an Administrative Law Judge who will hear live testimony, assess the credibility of witnesses, and weigh all the evidence in the record before making an initial decision. Likewise, the Commission cannot make a determination on whether Liaci's penalty of removal or other major discipline was inappropriate without the benefit of a full hearing record before it. Since Liaci has not conclusively demonstrated that she will succeed in having the underlying charges dismissed as there are material issues of fact present in the case, she has not shown a clear likelihood of success on the merits. In this regard, the appointing authority alleged that Liaci, while participating in a charity boxing event at a middle school on December 23, 2021, engaged in a verbal altercation with an off-duty subordinate Officer where she shouted lewd expletives and made multiple obscene hand gestures from inside the boxing ring toward the subordinate Officer. Further, this behavior continued when Liaci left the ring and the behavior was directed towards the subordinate Officer and her family. Moreover, this behavior was on school grounds and in plain view of the public. Clearly, these are serious allegations that warrant an immediate suspension as such allegations call in to question her fitness for duty and, thus, that suspension without pay was necessary to maintain safety, health, order or effective direction of public services. *See N.J.A.C. 4A:2-2.5(a)1*. Further, the record indicates that Liaci was afforded an opportunity to provide a written response prior to converting the suspension with pay to one without pay in compliance with *N.J.A.C. 4A:2-2.5(b)*. Further, while the Commission is cognizant of Liaci's financial situation, if Liaci is removed or major discipline is sustained after the departmental hearing and the FNDA is issued, the harm that she will suffer while awaiting her *de novo* hearing is financial in nature, and as such, can be remedied by the granting of back pay should she prevail in her appeal.² Moreover, given the serious nature of the disciplinary charges at issue, the public interest is best served by not having Liaci on the job pending the outcome of her departmental hearing or during any potential appeal to the Commission.

It is noted that *N.J.S.A. 11A:2-13* and *N.J.A.C. 4A:2-2.5(d)* provides, in pertinent part, 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. Therefore, if it has not already done so, the County should schedule and proceed with the departmental hearing as soon as possible.

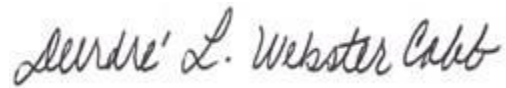
ORDER

Therefore, it is ordered that this petition be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

² The Commission notes that she would also be entitled to back pay should she prevail at the departmental level.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 20TH DAY OF JULY 2022



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