



STATE OF NEW JERSEY

DECISION OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Jose A. Robles,  
City of Newark

CSC Docket No. 2017-3779

Request for Interim Relief

ISSUED: SEP 08 2017 (JET)

Jose Robles, a Fire Captain with the City of Newark, petitions the Civil Service Commission (Commission) for interim relief of his indefinite suspension, commencing on April 6, 2016, pending disposition of criminal charges.

By way of background, on April 6, 2016, the petitioner was issued a Preliminary Notice of Disciplinary Action (PNDA) immediately and indefinitely suspending him without pay on charges of conduct unbecoming an employee, other sufficient cause, and violations of the appointing authority's rules, regulations or policies. Specifically, the appointing authority asserted that the petitioner was indicted by a Grand Jury on charges of Pirating Recordings (third degree), Possession With Intent to Sell Illegal Tapes (third degree), Trademark Counterfeiting (second degree), and Official Misconduct (second degree). After a limited purpose hearing conducted on May 2, 2016, the petitioner was served with a Final Notice of Disciplinary Action (FNDA), upholding the indefinite suspension. On May 5, 2017, the petitioner was found not guilty by a Grand Jury and the charges were dismissed. It is noted that a copy of the acquittal was mailed to the appointing authority on May 15, 2017. However, the appointing authority has taken no action by either returning him to work or issuing new administrative charges.

In his request, the petitioner argues that he is experiencing a financial hardship as the appointing authority has not yet conducted a departmental hearing. As such, the petitioner requests that, since the criminal charges have been dismissed, that he be reinstated and awarded back pay.

Despite being provided with the opportunity, the appointing authority has not provided a response in this matter.

### CONCLUSION

The appointing authority may impose an indefinite suspension to extend beyond six months where an employee is subject to criminal charges as set forth in *N.J.A.C. 4A:2-2.5(a)2*, but not beyond the disposition of the criminal complaint or indictment.

*N.J.A.C. 4A:2-2.10(c)* provides that where an employee, other than a municipal police officer, has been suspended based on a pending criminal complaint or indictment, following disposition of the charges the employee shall receive back pay, benefits and seniority if the employee is found not guilty at trial, the complaint or indictment is dismissed, or the prosecution is terminated. *N.J.A.C. 4A:2-2.10(c)2* states, in pertinent part, that where disciplinary action is taken following the disposition of the complaint or indictment, such items shall not be awarded in the case of removal.

In the instant matter, the petitioner received a PNDA on April 6, 2016 indefinitely suspending him pending the disposition of the criminal charges. A limited purpose hearing was conducted and an FNDA was issued upholding the indefinite suspension. On May 5, 2017, the criminal charges against the petitioner were dismissed. Although the criminal charges were dismissed, the appointing authority has not yet either reinstated the petitioner or brought forth administrative charges. Moreover, it has not provided any information in this matter to show that it plans to issue new administrative charges against him.

Upon dismissal of the criminal charges, it is settled that an employee is entitled to be immediately reinstated to employment following an indefinite suspension or promptly served with any remaining administrative charges upon which the appointing authority wishes to base disciplinary action. *See e.g., In the Matter of James Shanks* (MSB, decided May 7, 2003) (Even when an employee is ultimately removed on administrative disciplinary charges, he or she is entitled to an award of back pay for the period between dismissal of the criminal charges and service of a PNDA setting forth any remaining administrative charges). In this matter, the appointing authority failed to immediately reinstate the petitioner despite the petitioner's requests. Moreover, it did not serve him with new administrative charges. Absent new administrative charges, the petitioner is entitled to current relief in the form of back pay, benefits, and seniority from the date of the appointing authority's notice of the dismissal of the criminal charges, May 15, 2017, until either a PNDA is issued with administrative charges or the petitioner's reinstatement. Additionally, the Commission notes that if the



petitioner ultimately prevails against any new administrative charges (or if none are forthcoming), he would be entitled to back pay from the date of his indefinite suspension, April 6, 2016.

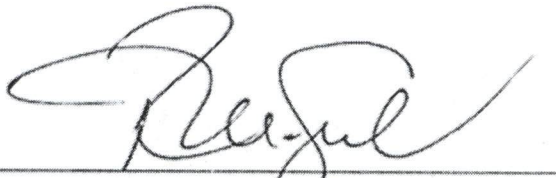
### ORDER

The Civil Service Commission orders that the petitioner be granted back pay, benefits, and seniority from May 15, 2017 until either a PNDA is issued as per above or the petitioner is reinstated.

If new administrative charges are brought against the petitioner and, after the departmental hearing, the charges are sustained, a disciplinary penalty may be imposed upon issuance of a FNDA. Moreover, if administrative charges are pursued, it is ordered that the appointing authority immediately schedule a departmental hearing on this matter, which shall commence not later than 30 days from the issuance of this decision, unless otherwise agreed to by the parties.

In the event that this Order is not fully complied with within 30 days of issuance of this decision, the Commission orders that a fine be assessed against the appointing authority in the amount of \$100 per day beginning on the 31<sup>ST</sup> day from the issuance of this decision and continuing for each day of continued violation, up to a maximum of \$10,000.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 6<sup>th</sup> DAY OF SEPTEMBER, 2017



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Civil Service Commission

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