



STATE OF NEW JERSEY

**DECISION OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Wesley Peters, *et al.*,
Union County

Request for Interim Relief

CSC Docket Nos. 2019-1223, *et al.*

ISSUED: APRIL 25, 2019

(ABR)

Wesley Peters, Jakari Lee and Antonio Melendez, all County Correction Officers with Union County, represented by Peter B. Paris, Esq., Michael P. DeRose, Esq., and Michael J. Mitzner, Esq., respectively, petition the Civil Service Commission for interim relief in relation to their immediate suspensions, effective October 19, 2018. Since these requests address similar issues, they have been consolidated herein.

By way of background, the instant matter was precipitated by an investigation into the death of an inmate at the Union County Jail on October 16, 2018. The incident occurred in an area of the facility where a County Correction Sergeant and the three petitioners were assigned. Collectively, the four correction officers were required to perform a walking, visual security check of their assigned area and to record the result of the check in a log book every 30 minutes. On October 19, 2018, the petitioners were advised in writing that they were being placed on “administrative leave without pay” pending the outcome of investigations by the Union County Prosecutor’s Office (County Prosecutor) and the Union County Department of Corrections (Union County DOC). Specifically, the notices stated that the petitioners were “to surrender your badge and radio . . . within twelve (12) hours if off duty or immediately if on duty at the time that you are served this correspondence.” The notices also contained the subject line: “Incident of October 16, 2018.” However, the notices did not specify the charges and general evidence that were the basis for placing the petitioners on “administrative leave without pay.” Further, the record does not indicate that the appointing authority verbally notified the petitioners of the nature of the charges and evidence against them or

provided them with an opportunity to respond when these notices were presented. On December 1, 2018, the appointing authority issued a Preliminary Notice of Disciplinary Action (PNDA) to each petitioner. The PNDAs stated that the petitioners were being immediately suspended without pay and charged with statutory misconduct; incompetency, inefficiency or failure to perform duties; conduct unbecoming a public employee; neglect of duty; other sufficient cause; and violation of five departmental rules and regulations. Specifically, the appointing authority asserted that the petitioners failed to make required visual inspections every half-hour and that they falsified a log book by indicating that they made half-hourly visual inspections between 8:30 a.m. and 11:30 a.m., when video footage showed that only an 11:20 a.m. visual inspection occurred. It is noted that departmental proceedings are currently pending and Final Notices of Disciplinary Action have not yet been issued.

In the instant petition for interim relief, the petitioners contend that what the appointing authority characterized on October 19, 2018 as an “administrative leave without pay” was in actuality an immediate suspension without pay and that the appointing authority’s notices failed to satisfy the requirements of *N.J.A.C. 4A:2-2.5* and *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985). In this regard, they assert that the appointing authority failed to provide them with PNDAs and/or an opportunity for a hearing with the October 19, 2018 notices. The petitioners also argue that the appointing authority has failed to demonstrate that their immediate suspensions were warranted under *N.J.S.A. 11A:2-13* and *N.J.A.C. 4A:2-2.5*.

In response, the appointing authority, represented by Eric M. Bernstein, Esq., asserts that the petitioners “administrative leave without pay” is distinguishable from a suspension because the former does not necessarily connote disciplinary action, while the latter does. Regardless, the appointing authority contends that the instant petitions for interim relief are moot based upon its December 1, 2018 service of PNDAs which offered both a *Loudermill* hearing and a disciplinary hearing in accordance with *N.J.A.C. 4A:2-2.5* to the petitioners and it maintains that any deficiencies in its actions between October 19, 2018 and December 1, 2018 can be resolved through the normal disciplinary process. Alternatively, the appointing authority argues that even if the petitioners’ appeals are not moot, they do not meet the requirements for interim relief set forth in *N.J.A.C. 4A:2-1.2(c)*. Specifically, it contends that the petitioners are unlikely to succeed on the merits because of evidence that they failed to make required visual inspections on October 17, 2018 and admitted under oath to making multiple false entries in a log book about performing searches that they did not make. Additionally, it argues there is no danger of irreparable harm, as any damages the petitioners may have suffered can be remedied through monetary damages. Further, it asserts that the petitioners’ immediate placement on “administrative leave without pay” was within the public interest because it was clear that the

petitioners “had no business being in the workplace or earning a salary pending the imposition of discipline,” given concerns that they could have contributed to the deaths or injuries of other inmates if left on duty while both it and the County Prosecutor investigated the October 17, 2018 incident.

In reply, Lee asserts that the record demonstrates that his “administrative leave without pay,” effective October 19, 2018, was in fact an immediate suspension and he maintains that he was not notified about the specific charges against him until he was served with a PNDA on December 1, 2018.

CONCLUSION

N.J.A.C. 4A:2-1.2(c) provides that 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.

However, in reviewing this matter, it is not necessary to address the merits of the charges against the petitioners. Rather, the issue to be determined is whether the appointing authority presented a valid basis to immediately suspend the petitioners. *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. *N.J.A.C.* 4A:2-2.5(a)1 further provides that, when an appointing authority suspends an employee prior to a hearing, a PNDA with an opportunity for a hearing must be served in person or by certified mail within five days following the immediate suspension. *N.J.A.C.* 4A:2-2.5(b) provides that, prior to the imposition of an immediate suspension, the employee must 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 a sufficient opportunity to review the charges and evidence in order to respond to the charges before a representative of the appointing authority. *N.J.A.C.* 4A:2-2.5(b) further provides that the employee’s response may be either oral or in writing, at the discretion of the appointing authority.

Initially, although the appointing authority argues that its placement of the petitioners on “administrative leave without pay” did not equate to discipline, the Commission does not agree. The record is clear that the petitioners were immediately suspended without pay regardless of the characterization.

Additionally, the Commission finds that the appointing authority possessed a valid basis for imposing an immediate suspension, pending the petitioners' departmental hearings on the merits of the charges. The petitioners are charged with maintaining the safety and security of the facility and the inmates within and it is alleged that they failed to perform their required half-hourly inspections of the area to which they were assigned and in which a prisoner was found deceased. It is further alleged that the petitioners falsely stated in a log book that they performed these half-hourly inspections. Employees in custodial positions in a correctional facility can surely be deemed a hazard to other officers and inmates when they fail to perform routine inspections intended to monitor the safety of conditions in the facility and when they falsify records related to their assigned responsibilities. Moreover, the Commission is mindful that the petitioners, as law enforcement officers, are held to a higher standard than other public employees. See *Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), cert. denied 47 N.J. 80 (1966). See also *In re Phillips*, 117 N.J. 567 (1990). Thus, based on the nature of the charges against the petitioners, the Commission finds that the appointing authority possessed a valid basis for imposing immediate suspensions, pending the petitioners' departmental hearings on the merits of the charges.

However, the petitioners have demonstrated that the appointing authority violated the requirements of N.J.A.C. 4A:2-2.5(b) and *Loudermill*, supra, by immediately suspending them on October 19, 2018. In this regard, it is observed that the notices furnished to the petitioners on that date failed to specify the charges and general evidence in support of the charges at the time of the petitioners' respective suspensions and the notices did not provide them with an opportunity to respond. Moreover, there is no indication in the record that the information concerning the charges and evidence and the opportunity to respond was given verbally when the notices were presented. The Commission notes that while such procedural deficiencies do not warrant dismissal of the charges brought against the petitioners pursuant to the PNDAs, it is appropriate to institute a remedy for the appointing authority's failure to adhere to the requirements of *Loudermill* and N.J.A.C. 4A:2-2.5(b). See *In the Matter of Robert Totten* (MSB, decided August 12, 2003); *In the Matter of Kenneth F. Hixenbaugh* (MSB, decided February 24, 1998). Thus, since the petitioners did not receive proper *Loudermill* notices or PNDAs until December 1, 2018, it is appropriate that they be awarded back pay for the period from October 19, 2018 to November 30, 2018. The Commission also notes that based upon this award of back pay, if any of the petitioners should ultimately be removed, the effective date of the removal is to be recorded as December 1, 2018.

ORDER

Therefore, it is ordered that the petitioners' requests for interim relief regarding their immediate suspensions be granted in part. It is further ordered

that the petitioners be awarded back pay for the period from October 19, 2018 to November 30, 2018 and that their records reflect an immediate suspension, effective December 1, 2018. Additionally, if any of the petitioners are removed from employment, the effective date of removal shall be recorded as December 1, 2018.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 24TH DAY OF APRIL, 2019



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