



STATE OF NEW JERSEY

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

In the Matter of Hector Nieves,
Lawrence Township

CSC Docket No. 2021-07

Request for Interim Relief

ISSUED: September 16, 2020 (JET)

Hector Nieves, a Police Officer with Lawrence Township, represented by Charles J. Sciarra, Esq., petitions the Civil Service Commission (Commission) for interim relief of his immediate and indefinite suspension commencing on May 20, 2020, pending disposition of the criminal charges.

As background, a citizen inquiry was submitted to the appointing authority indicating that a marked Lawrence Township Police vehicle was parked at a Lowe's shopping center in West Windsor, and as a result, the appointing authority conducted an investigation. The investigation revealed that the vehicle was assigned to Nieves and, although he was on his lunch break at the time of the infraction, he did not accurately report his location in the Computer Aided Dispatch (CAD) system.¹ It is noted that the appointing authority also uses Global Positioning System (GPS) locator devices in Police vehicles in order to log the location of Police Officers and Police vehicles at all times. As a result of the investigation's findings, the appointing authority reviewed the prior 30 days of the subject Police vehicle's GPS records with Nieves' CAD system records, and continued to monitor Nieves' location during each day of the investigation. The investigation revealed that, from March 21, 2020 through May 11, 2020, Nieves was not in the location that was reported in the CAD system. As a result, the investigation findings were forwarded to the Mercer County Prosecutor's Office for

¹ The appointing authority provides up to an hour of paid lunch break for Police Officers. However, they remain on call to respond to emergencies while on lunch, and as such, Police Officers are expected to accurately report their locations while on lunch break.

review, and criminal charges were issued against Nieves on May 21, 2020. Specifically, the appointing authority asserts that on May 21, 2020, the Mercer County Prosecutor's Office issued complaints against Nieves for unlawfully altering a camera installed in a police vehicle in Princeton in violation of *N.J.S.A. 2C:28-7c* (4th degree), entering a closed park in violation of local rules; and for falsifying official records in Lawrence Township in violation of *N.J.S.A. 2C:28-7A(1)*. On May 21, 2020, the appointing authority issued a Preliminary Notice of Disciplinary Action (PNDA) recommending an immediate and indefinite suspension commencing on May 20, 2020. A departmental hearing was conducted on May 29, 2020 and the immediate and indefinite suspension was upheld. A Final Notice of Disciplinary Action (FNDA) upholding the indefinite suspension was issued on June 11, 2020 and served that same day.

In his request to the Commission, the petitioner maintains that his immediate suspension was improper and requests a hearing in this matter. Specifically, the petitioner asserts that on October 7, 2019, he filed a "whistleblower" lawsuit against the appointing authority, and as a result, he was subjected to retaliation. The petitioner explains that disciplinary and criminal charges were subsequently issued against him, which evidences the retaliatory conduct toward him by the appointing authority. Further, the petitioner states that he has been serving in his position for 20 years and he will experience immediate and irreparable harm if the suspension without pay is continued. The petitioner adds that there is no evidence indicating that he is unfit for duty or that his return to duty would jeopardize continued public services or would result in harm to others. Moreover, the petitioner maintains that the charges against him are unfounded and he did not violate any rules with respect to his actions during his lunch breaks.

In response, the appointing authority, represented by Armando V. Riccio, Esq., maintains that the instant request should be denied, as Nieves' immediate and indefinite suspension pending disposition of the criminal charges was appropriate. Specifically, the appointing authority asserts that on May 21, 2020, the Mercer County Prosecutor's Office issued complaints against Nieves for unlawfully altering a camera installed in a police vehicle in Princeton in violation of *N.J.S.A. 2C:28-7c* (4th degree), entering a closed park in violation of local rules; and for falsifying official records in Lawrence Township in violation of *N.J.S.A. 2C:28-7A(1)*. The appointing authority states that a departmental hearing was held and a hearing officer from outside the appointing authority's jurisdiction upheld the suspension. The appointing authority states that the petitioner is unfit for duty, and his suspension is required in order to maintain order and effectively provide public services. It is in the public interest to suspend law enforcement officers pending the outcome of criminal charges, and in this case, such charges relate to falsification of official records. The appointing authority contends that law enforcement officers are held to a higher standard of conduct, and given the

circumstances and charges against him, Nieves cannot at this time function at the level expected of a law enforcement officer. The appointing authority states that, based on the above, the petitioner has not demonstrated a clear likelihood of success or immediate or irreparable harm in this matter. Moreover, the appointing authority asserts that the petitioner's lawsuit does not overcome that criminal charges were issued against him and that the indefinite suspension without pay should be upheld.

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.

Initially, the petitioner requests a hearing in this matter. For the reasons set forth below, a hearing is unnecessary as this matter is ripe for a determination on the written record. *N.J.S.A.* 11A:2-13 and *N.J.A.C.* 4A:2-2.5(a)2 allow an individual to be indefinitely suspended if he or she has been charged with crimes of the first, second or three degree **or a crime of the fourth degree on the job or directly related to the job**. The standard for determining that such an indefinite suspension is appropriate is whether the public interest would best be served by suspending the individual until the disposition of the charges. The public interest is best served by suspending such an individual if, based on the criminal charges, that individual is unfit for duty, a hazard to any person if permitted to remain on the job, or that such a suspension is necessary to maintain safety, health, order or effective direction of public services. See *N.J.A.C.* 4A:2-2.5(a)1. Whether an individual will ultimately be found guilty of the criminal charges is not at issue in determining whether the indefinite suspension is appropriate. Further, *N.J.A.C.* 4A:2-2.7(a)2 states that an indefinite suspension may not last beyond the disposition of the criminal complaint or indictment.

In this matter, it is clear that the criminal charges supported the necessity for an indefinite suspension. Pursuant to the above listed rules, an indefinite suspension may *only* be imposed when an individual has a criminal complaint or indictment pending. Since the petitioner had criminal charges and an indictment pending at the time of his suspension, it is clear that the appointing authority had a valid basis to immediately and indefinitely suspend the petitioner based on the pending charges against him. With respect to the petitioner's argument that he possesses 20 years of service, does not present a danger and he will experience a financial hardship if the suspension is continued, such arguments do not change the

outcome of the case or establish his contentions. The public interest is best served by not having a Police Officer with such serious job-related criminal charges pending on the job, especially when the charges relate to allegations dealing with the public trust and the employee is a law enforcement officer charged with protecting such trust. Since the petitioner was charged with a violation of the criminal law in the fourth degree and for falsifying records, the appointing authority's imposition of an indefinite suspension was appropriate.

Additionally, the appointing authority properly issued a PNDA and held a limited hearing, and issued a FNDA. As such, the indefinite suspension was properly implemented. See *N.J.A.C.* 4A:2-2.5(a)1, 4A:2-2.5(b); 4A:2-2.7(a)1 and 4A:2-2.7(a)3. Moreover, the petitioner has not shown that he is in danger of immediate or irreparable harm if this request is not granted. While the Commission sympathizes with his financial situation, the harm that he is experiencing is purely financial in nature, and as such, can be remedied by the granting of back pay should he ultimately prevail. Although the petitioner claims that the charges against him are unwarranted and he was subjected to retaliation due to his whistleblower complaint, such information does not establish his claims in this matter. If the criminal charges are ultimately dismissed, the appointing authority must either reinstate the petitioner or issue new administrative charges against him.

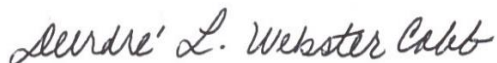
Accordingly, given the serious nature of the criminal charges, it is clear that the appointing authority met the standards for an immediate and indefinite suspension. Therefore, the petitioner's request for interim relief is denied.

ORDER

The Civil Service Commission orders 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 16TH DAY OF SEPTEMBER 2020



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher Myers
Director
Division of Appeals
& Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
PO Box 312
Trenton, New Jersey 08625-0312

c: Hector Nieves
Charles J. Sciarra, Esq.
Armando V. Riccio, Esq.
Kelly Glenn