



**STATE OF NEW JERSEY**

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

In the Matter of Frank Cerami, City of  
Newark

CSC Docket No. 2021-227

Request for Interim Relief

**ISSUED: OCTOBER 2, 2020 (SLK)**

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Frank Cerami, a Fire Fighter with Newark<sup>1</sup>, represented by Craig S. Gumpel, Esq. and Michael L. Prigoff, Esq.,<sup>2</sup> petitions the Civil Service Commission (Commission) for interim relief regarding his immediate suspension.

By way of background, on June 23, 2020, Newark issued a Preliminary Notice of Disciplinary Action (PNDA) immediately suspending Cerami for violating departmental rules and administrative regulations by publicly commenting in support of a controversial social media post. Specifically, a Facebook member posted, "Lives Matter! If you need a color in front of those words, YOU'RE a racist." On June 20, 2020, Cerami responded by agreeing with this post, and stating "...this country is going down the tubes real fast, all these f\*\*\*\* are nothing but a bunch of criminals." Cerami further went on to state, "I'm so sick of all this black s\*\*\*!!!!!!!!!"

Newark found that Cerami's post violated its social media policy as his choice to post racially inflammatory comments on social media undermines the integrity of the Newark Fire Division (Division), and directly insults fellow members of the

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<sup>1</sup> Cerami indicates that he has been employed by Newark as a Fire Fighter since August 24, 1994 and he has no prior discipline. He submits a document which appears to be from Newark's internal personnel system which confirms that his employment began on August 24, 1994. The County and Municipal Personnel System (CAMPS) indicates that there is a Frank Cerami who was appointed as a Fire Fighter on August 24, 1994 by Newark and was separated on August 31, 2004. As such, Newark needs to correct Cerami's CAMPS record.

<sup>2</sup> Gumpel is Cerami's union attorney and Prigoff is his personal attorney in this matter.

Division. It concluded that Cerami's actions had the potential to negatively affect internal working relationships within the Division, and its ability to operate safely and efficiently. Cerami requested a Limited Purpose hearing to determine if the immediate suspension was warranted. Thereafter, on June 26, 2020, Gumpel submitted a response to Newark arguing that Cerami's immediate suspension was unjustified and requesting discovery. Thereafter, on July 9, 2020, a Limited Purpose hearing was held, and Newark issued a "Final Notice of Disciplinary Action" (FNDA)<sup>3</sup> on July 16, 2020, which indicated that Cerami would remain on suspension and a new PNDA was to be issued for the pending administrative charges. Also on July 16, 2020, Newark issued a second PNDA for the same charges indicating that it was seeking his removal. On July 22, 2020, Cerami's union representative notified Newark that he requested a departmental hearing. Thereafter, in an August 5, 2020 letter, Newark indicated that the departmental hearing was to be held on August 13, 2020. Subsequently, the parties agreed to Newark's request to adjourn the departmental hearing.<sup>4</sup> Cerami indicates that the departmental hearing has not been rescheduled.

In his request for interim relief, Cerami argues that he has a clear likelihood of success on the merits as none of the alleged posts relate to the Division. He presents that *Karins v. City of Atlantic City*, 152 N.J. 532 (1998) indicated that Fireman do not have a watered-down version of constitutional rights and the court is to balance the interest of the employee acting as a citizen and commenting upon matters of public concern, and the interests of the public employer promoting the efficiency of the public services it provides. Cerami presents that in *Karins*, an off-duty firefighter who identified himself as a firefighter directed a racial epithet at an on-duty police officer in public, which led to the firefighter being suspended for 48 working days without pay. Further, the firefighter previously had been suspended without pay for similar conduct. Cerami distinguishes this matter by indicating that he engaged in a personal social media posting while off-duty that was not directed at any individual nor co-worker. Further, he has no prior discipline over his 26-year career. Therefore, Cerami argues that Newark has not met the criteria for imposing an immediate suspension.

Cerami argues that he will be irreparably harmed if interim relief is not granted. He asserts that he a constitutional right to comment on matters of public concern. Moreover, Cerami presents that Newark failed to comply with *N.J.A.C. 4A:2-2.5(d)* and *N.J.S.A. 11A:2-13* as there is no date to resolve his indefinite suspension, which violates his due process rights. He indicates that his suspension,

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<sup>3</sup> Although Newark issued a FNDA in response to Cerami's Limited Purpose hearing which continued his immediate suspension, this FNDA did not satisfy Newark's obligation to issue a FNDA after a full departmental hearing under *N.J.A.C. 4A:2-2.6(d)*.

<sup>4</sup> The record indicates that the appointing authority and Cerami's union representative signed a "trial adjournment agreement" form which indicated that Newark was requesting an adjournment and that the next agreed hearing date was "TBD."

“can only generally span 55 days from its inception, allowing for the maximum time for the departmental hearing process to be completed.” See *In the Matter of Michael Chirico* (CSC, decided June 17, 2020). Cerami states that he has been suspended without pay for 70.5 days. He asserts that he is entitled to pay starting on Day 55 (August 17, 2020) and continuing until his reinstatement and/or departmental hearing is convened and a FNDA is issued.

Cerami argues that there is an absence of substantial injury to Newark if he is reinstated pending a hearing. He asserts that Newark failed to provide evidence that his immediate suspension was necessary to maintain safety, health, order or effective direction of public services. Cerami highlights his over 26 years of service as a Fire Fighter and there is no evidence that the alleged conduct is related to his performance as a Fire Fighter nor is there any evidence that if he is reinstated that this will impact the Division’s ability provide services to the city.

Cerami argues that the public interest is best served by paying him back pay and reinstating him pending a hearing. He asserts that the involuntary separation of a Fire Fighter without pay prior to a departmental hearing should only be limited to circumstances where such actions are required to maintain health, safety, order or effective direction of public services. Further, Cerami presents that the State Constitution provides that he has vested rights to his employment. He states that the public interest is best served when a public employee is served disciplinary charges that the departmental hearing be held within 30 days. Cerami highlights that on the day he was served the initial PNDA, he continued to work a few hours prior to the implementation of the immediate suspension. Therefore, he questions why if an immediate suspension was necessary based on his alleged conduct, he could remain on duty for approximately 2.5 hours after being served the PNDA and asserts that Newark’s actions belie its justification for his immediate suspension. Cerami requests reinstatement to full duty with back pay and benefits, counsel fees and the scheduling of a departmental hearing.

Despite being provided the opportunity, Newark did not respond.<sup>5</sup>

## CONCLUSION

Pursuant to *N.J.A.C. 4A:2-1.2(c)*, the standards to be considered regarding a petition for interim relief are:

1. Clear likelihood of success on the merits by the petitioner;
  2. Danger of immediate or irreparable harm if the request is not granted;
  3. Absence of substantial injury to other parties if the request is granted;
- and

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<sup>5</sup> After the time that the appointing authority was advised to respond, the appointing authority indicated that the departmental hearing was scheduled for September 24, 2020.

4. The public interest.

*N.J.S.A.* 11A:2-13 and *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. However, a PNDA with 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(d) indicates 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**. *N.J.A.C.* 4A:2-2.6(d) states that within 20 days of the hearing, or such additional time as agreed to by the parties, the appointing authority shall make a decision on the charges and furnish the employee either by personal service or certified mail with a FNDA.

*N.J.A.C.* 4A:2-2.12(a) provides that the Commission shall award partial or full reasonable counsel fees incurred in proceedings before it and incurred in major disciplinary proceedings at the departmental level where an employee has prevailed on all or substantially all of the primary issues before the Commission.

Initially, it is noted that it was appropriate for Newark to immediately suspend Cerami. The alleged conduct has the potential to negatively affect internal working relationships with the Division, and its ability to operate safely and efficiently. Further, 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 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. In other words, the mere fact that the circumstances in the instant matter do not exactly mirror the circumstances in *Karins, supra*, does not mean that Cerami's alleged conduct is considered protected speech and that he has a clear likelihood of success on the merits. Further, while the Commission is cognizant of his financial situation, the harm that he is suffering while awaiting the outcome of the administrative proceedings is financial in nature, and as such, can be remedied by the granting of back pay should he ultimately prevail. Additionally, given the serious nature of the disciplinary charges at issue, the public interest is best served by not having Cerami on the job pending the outcome of any such charges.

Pursuant to *N.J.A.C.* 4A:2-2.5(a)1, *N.J.A.C.* 4A:2-2.5(d) and *N.J.A.C.* 4A:2-2.6(d), such a suspension can only generally span 55 days from its inception, allowing for the maximum time for the departmental hearing process to be completed. However, in this case there is a signed document indicating that Cerami agreed to

Newark's request for an adjournment of the original August 13, 2020 hearing date. While there is no date indicated in that agreement as to when the hearing was to commence, information provided by Newark indicates that the departmental hearing was to commence on September 24, 2020. While it is clear that the adjournment agreement would not afford Newark an unlimited time to commence the hearing, given that the hearing was rescheduled for September 24, 2020, the Commission finds that there is no violation of the above regulations.<sup>6</sup> Moreover, as indicated above, should Cerami be either successful at the departmental level or subsequently before the Commission from an appeal of any major discipline that may be imposed in conjunction with this matter, he will be entitled to back pay, dating back to the imposition of the original immediate suspension. Accordingly, his request for interim relief is denied. As Cerami's request is denied, he is not entitled to counsel fees.

### 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.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 30<sup>TH</sup> DAY OF SEPTEMBER, 2020

*Deirdre' L. Webster Cobb*

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<sup>6</sup> Clearly, if there is a protracted delay in a departmental hearing or where there is no agreement to an adjournment, a suspended employee would be entitled to some type of relief.

c: Frank Cerami  
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