



**STATE OF NEW JERSEY**

**DECISION OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of Mark Nace, Warren  
County

CSC Docket No. 2021-1104

Interim Relief

**ISSUED: APRIL 12, 2021 (HS)**

Mark Nace, a County Correctional Police Officer, represented by Giovanna Giampa, Esq., petitions the Civil Service Commission (Commission) for interim relief of his indefinite suspension.

As background, the appointing authority immediately suspended the petitioner, with pay, on or about October 21, 2020. On October 23, 2020, the appointing authority issued the petitioner a Preliminary Notice of Disciplinary Action (PNDA), charging him with insubordination; conduct unbecoming a public employee; discrimination that affects equal employment opportunity, including sexual harassment; and other sufficient cause. Specifically, it was alleged that the petitioner, while on duty and in uniform within the Warren County Correctional Facility, inappropriately touched a facility staff nurse and later struck the same individual with a medical file on her arm. The October 23, 2020 PNDA noted the petitioner’s immediate suspension with pay and listed suspension, indefinite suspension, and removal as potential disciplinary penalties to be taken. On December 1, 2020, the petitioner was charged with simple assault in violation of *N.J.S.A. 2C:12-1A(1)*, a disorderly persons offense, and harassment in violation of *N.J.S.A. 2C:33-4C*, a petty disorderly persons offense. On December 16, 2020, the appointing authority issued an amended PNDA, which included the administrative charges from the October 23, 2020 PNDA but also listed the petitioner’s Title 2C simple assault and harassment charges. The amended PNDA listed suspension, indefinite suspension, and removal as potential disciplinary penalties to be taken. With the amended PNDA, the appointing authority also issued a letter to the petitioner stating that he would be permitted to submit a response on the issue of

whether an immediate suspension *without* pay was necessary to maintain safety, health, order or effective direction of public services. On December 23, 2020, the petitioner submitted written correspondence arguing that his suspension should remain with pay. However, on January 4, 2021, the appointing authority issued the petitioner a Final Notice of Disciplinary Notice (FNDA) imposing, effective that same date, an indefinite suspension without pay pending disposition of the simple assault and harassment charges.

In his request, the petitioner maintains that he is neither unfit for duty nor a hazard to any person if permitted to remain on the job. He argues that he would face immediate and irreparable harm in the absence of interim relief. Specifically, he states that due to the COVID-19 pandemic, cases in the court system are stalled and he will be without a source of income for the immediate and indefinite future. The petitioner further contends that he is not a threat to public safety if he is to remain on the job, and there is no substantial injury to other parties should interim relief be granted. Specifically, the petitioner proffers that he could be returned to work and be separated from the complainant. For example, he could be placed on an alternate schedule from the individual while maintaining physical distance or be placed on modified or desk duty pending disposition of the simple assault and harassment charges. The petitioner adds that there is no disqualifying condition as to his continued suspension with pay. Based on his arguments, the petitioner requests his immediate reinstatement, on a retroactive basis, with back pay, seniority, and benefits.

In response, the appointing authority, represented by J. Andrew Kinsey, Esq., contends that the petitioner's immediate and indefinite suspensions were procedurally and substantively appropriate given that he is a law enforcement officer. It argues that the petitioner will not suffer immediate and irreparable harm since the harm he is experiencing—a purely financial one—can be remedied with back pay should he ultimately prevail. The appointing authority asserts that there is a clear presence of substantial injury to other parties if the petitioner is reinstated since he is entrusted with maintaining the safety of inmates and employees. It further argues that the petitioner's reinstatement would diminish public trust in law enforcement because it would imply that the appointing authority condones or tolerates workplace harassment.

## CONCLUSION

*N.J.A.C.* 4A:2-1.2(c) provides the following factors for consideration in evaluating a petition 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.

It must initially be emphasized that the role of the Commission at this stage in the proceedings is not to adjudicate the merits of any underlying charges. Rather, the Commission must decide whether the petitioner's immediate and indefinite suspensions were valid.

*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 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. Here, the petitioner's immediate suspension was necessary to maintain safety, health, order, and the effective direction of the correctional facility and to avoid danger to others. In this regard, the petitioner is alleged to have inappropriately touched and struck a fellow employee. As such, the immediate suspension was clearly justified.

Nevertheless, at issue is whether the appointing authority could indefinitely suspend the petitioner, pending disposition of his simple assault and harassment charges. The Commission finds that it could not. *N.J.A.C.* 4A:2-2.7(a)2, in conjunction with *N.J.A.C.* 4A:2-2.5(a)2, provides that an employee may be indefinitely suspended beyond six months where the employee is formally charged with a crime of the first, second or third degree, or a crime of the fourth degree on the job or directly related to the job. *See also*, *N.J.S.A.* 11A:2-13 (stating, in pertinent part, that where a suspension is based on a formal charge of a crime of the first, second, or third degree, or a crime of the fourth degree if committed on the job or directly related to the job, the suspension may continue until a disposition of the charge). The petitioner does not face any such charge. Rather, he has been respectively charged with a disorderly persons offense and a petty disorderly persons offense, neither of which provided the appointing authority with a basis to impose an indefinite suspension. Therefore, the indefinite suspension cannot be upheld, and this matter must proceed to a departmental hearing on the administrative charges, to be held within 30 days of receipt of this decision. After the hearing, the appointing authority shall issue an FNDA. The Commission cautions the appointing authority to adhere to all disciplinary rules, particularly those pertaining to indefinite suspensions, in the future. Its failure to do so may subject it to fines or penalties pursuant to *N.J.A.C.* 4A:10-1.1.

The Commission will, however, decline the petitioner's request for a retroactive reinstatement at this time. As already discussed, the petitioner's *immediate* suspension was appropriate. Moreover, since the petitioner has not conclusively demonstrated that he will succeed in having the administrative charges dismissed as there are material issues of fact, he has not shown a clear likelihood of success on the merits. The petitioner has also not shown that he is in danger of immediate or

irreparable harm if he is not reinstated. The harm that he is suffering is financial in nature and, as such, can be remedied by the granting of back pay should he ultimately prevail. Further, it would be potentially detrimental to individuals with whom the appellant might interact on the job, and to the public interest, to compel the appointing authority to return to employment a County Correctional Police Officer who is alleged to have inappropriately touched and struck another employee.

### ORDER

Therefore, the petitioner's immediate suspension is upheld. The indefinite suspension imposed by the appointing authority is not upheld. Finally, it is ordered that a departmental hearing be held as set forth above.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 7<sup>TH</sup> DAY OF APRIL, 2021

*Deirdre' L. Webster Cobb*

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