



STATE OF NEW JERSEY

In the Matter of Jesse O'Brien,
Jersey City

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

CSC Docket No. 2024-1222

Request for Interim Relief

ISSUED: February 28, 2024 (SLK)

Jesse O'Brien, a Police Officer with Jersey City, represented by Zinovia H. Stone, Esq., petitions the Civil Service Commission (Commission) for interim relief regarding his removals.

By way of background, after a departmental hearing, Jersey City issued four separate Final Notices of Disciplinary Action (FNDA) to O'Brien on November 11, 2023, removing him, on charges, effective that same date. O'Brien appealed his removals to the Commission and the matters were transmitted to the Office of Administrative Law (OAL) as contested cases.

In his request, O'Brien states that Jersey City cut off the departmental hearing prior to resting its case. He asserts that he was not given the opportunity to fully cross-examine its witnesses or present his own witnesses or any evidence. O'Brien argues that his right to a hearing under Civil Service law and rules was violated. Therefore, he requests that the FNDAs be invalidated, and the matter be remanded back to Jersey City for a full departmental hearing.

In response, Jersey City, represented by Christopher M. Kurek, Esq., indicates that O'Brien was provided written notices of the charges, discovery related to the charges, and afforded a hearing. The departmental hearing took place on six dates between September 6, 2023, and November 8, 2023. It states that it presented two witnesses and entered relevant documents into evidence. Jersey City notes that the

direct examination was, at most, two days. Thereafter, O'Brien took the remaining four days for cross-examination. It claims that throughout the hearing, O'Brien attempted to delay the proceedings, including requesting 30-day adjournments on multiple occasions. After the six-day hearing, Jersey City provides that the hearing panel concluded that there was sufficient evidence to sustain most of the charges. After reviewing the hearing panel's reports, Jersey City issued four FNDAs removing O'Brien.

Jersey City highlights that O'Brien's counsel provided a witness list containing more than 93 witnesses, continually requested 30-day adjournments during the hearing, and was attempting to drag out the departmental hearing as long as possible. Therefore, the hearing panel decided that there was sufficient evidence to sustain the charges and end the delay tactics. It asserts that it was O'Brien's decision to spend four days cross-examining witnesses rather than presenting his case. Therefore, Jersey City believes that O'Brien had an opportunity for a fair hearing which complied with Civil Service law and rules. Further, Jersey City states that O'Brien has not established immediate or irreparable harm since the matters are now at the OAL where he will have an opportunity for *de novo* hearings, where he can contest the charges, cross-examine witnesses, and present his own witnesses and evidence. Moreover, it argues that it would not be in the public interest to remand the matter and have it spend additional time and resources on this case, where O'Brien has repeatedly sought to delay the matter.

In reply, O'Brien presents case law that indicates that only minor procedural deficiencies are cured by a *de novo* hearing. He states that in the present matter, he was denied an opportunity to present a case, which is a major deficiency tantamount to not allowing a hearing in the first place. O'Brien contends that he was not permitted to cross-examine all witnesses and completely deprived of the opportunity to present any witnesses. Further, O'Brien argues that to say that procedural deficiencies are always cured by a *de novo* hearing at the OAL, renders the right to a hearing meaningless.

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
4. The public interest.

Initially, the Commission notes that it has very limited jurisdiction over the conduct of departmental-level hearings. *See e.g. N.J.A.C. 4A:2-2.5 and N.J.A.C. 4A:2-2.6.*

In this matter, Jersey City presents that a departmental hearing was held on six days over a two-month period. It presented two witnesses, videos, and other documentation into evidence. Jersey City's direct examination took place over two days. Further, O'Brien spent four days on cross-examination. Jersey City asserts that O'Brien's counsel provided a witness list containing more than 93 witnesses and continually requested 30-day adjournments during the hearing, which O'Brien has not denied. Further, based on the witness testimony, video and other evidence, the hearing panel concluded that there was sufficient evidence to sustain most of the charges. Notwithstanding the above, the Commission finds that Jersey City did not fully comply with *N.J.A.C. 4A:2-2.6(c)* as it did not allow him to present witnesses. Regardless, this violation does not present a basis to provide the remedies O'Brien seeks.

In this regard, O'Brien's appeals of his removals were received by this agency and the matters have been transmitted to the OAL as contested cases. Thus, since O'Brien has already appealed his removals and has been granted the opportunity for full *de novo* hearings at the OAL, any deficiency at the departmental proceedings identified above is deemed cured, and he may receive back pay if he ultimately prevails. The Commission notes that, procedural defects which occur at the departmental or municipal level that are not substantially prejudicial to the employee are, in essence, cured by the granting of a *de novo* hearing at the OAL. *See Ensslin v. Township of North Bergen*, 275 *N.J. Super.* 352, 361 (App. Div. 1994), *cert. denied*, 142 *N.J.* 446 (1995); *In re Darcy*, 114 *N.J. Super.* 454 (App. Div. 1971). In this matter, O'Brien has not shown that he has been substantially prejudiced based on the procedural deficiency described above, and by granting him hearings at the OAL, he has received much of the remedy he seeks. Moreover, unlike the provisions of *N.J.A.C. 4A:2-2.6(a)*, where the departmental-level hearing is held before "the appointing authority or its designated representative," his hearings at OAL will be held in a completely neutral forum.

ORDER

Therefore, it is ordered that the petition 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 28TH DAY OF FEBRUARY, 2024

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