

Traffic signal repairer removed for falsifying application for employment with regard to criminal convictions. *Florenzo v. Bergen County Department of Public Works*, 96 N.J.A.R.2d (CSV) 22.

Police officer who lost police radio through carelessness was appropriately fined. *Przybyszewski v. Gloucester Township Police Department*, 95 N.J.A.R.2d (CSV) 623.

4A:2-2.5 Opportunity for hearing before the appointing authority

(a) An employee must be served with a Preliminary Notice of Disciplinary Action setting forth the charges and statement of facts supporting the charges (specifications), and afforded the opportunity for a hearing prior to imposition of major discipline, except:

1. 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 Preliminary Notice of Disciplinary Action with opportunity for a hearing must be served in person or by certified mail within five days following the immediate suspension.

2. An employee may be suspended immediately when 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 N.J.A.C. 4A:2-2.7.

(b) Where suspension is immediate under (a)1 and (a)2 above, and is without pay, the employee must first 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 sufficient opportunity to review the charges and the evidence in order to respond to the charges before a representative of the appointing authority. The response may be oral or in writing, at the discretion of the appointing authority.

(c) The employee may request a departmental hearing within five days of receipt of the Preliminary Notice. If no request is made within this time or such additional time as agreed to by the appointing authority or as provided in a negotiated agreement, the departmental hearing may be considered to have been waived and the appointing authority may issue a Final Notice of Disciplinary Action.

(d) A departmental hearing, if requested, shall be held within 30 days of the Preliminary Notice of Disciplinary Action unless waived by the employee or a later date as agreed to by the parties.

(e) Appeals concerning violations of this section may be presented to the Commissioner through a petition for interim relief. See N.J.A.C. 4A:2-1.2.

Amended by R.1989 d.569, effective November 6, 1989.
See: 21 N.J.R. 1766(a), 21 N.J.R. 3448(b).
Added new (e).

Amended by R.1992 d.414, effective October 19, 1992.
See: 24 N.J.R. 2491(a), 24 N.J.R. 3716(a).
Revised (a).

Law Review and Journal Commentaries

Discrimination—Collateral Estoppel—Police Officers. Judith Nallin, 138 N.J.L.J. No. 1, 49 (1994).

Case Notes

Adequate consideration given provisions of Law Against Discrimination. *Ensslin v. Township of North Bergen*, 275 N.J.Super. 352, 646 A.2d 452 (A.D.1994), certification denied 142 N.J. 446, 663 A.2d 1354.

Procedural irregularities at departmental level; cured by hearing at agency level. *Ensslin v. Township of North Bergen*, 275 N.J.Super. 352, 646 A.2d 452 (A.D.1994), certification denied 142 N.J. 446, 663 A.2d 1354.

Waiver of hearing. *Ensslin v. Township of North Bergen*, 275 N.J.Super. 352, 646 A.2d 452 (A.D.1994), certification denied 142 N.J. 446, 663 A.2d 1354.

Departmental hearing required within thirty days of preliminary notice of disciplinary action. *Ensslin v. Township of North Bergen*, 275 N.J.Super. 352, 646 A.2d 452 (A.D.1994), certification denied 142 N.J. 446, 663 A.2d 1354.

Due process rights of corrections officers who were dismissed for failure to comply with mandatory drug test order were violated. *Caldwell v. New Jersey Dept. of Corrections*, 250 N.J.Super. 592, 595 A.2d 1118 (A.D.1991), certification denied 127 N.J. 555, 606 A.2d 367.

Lack of entitlement to post termination hearing. *Grexa v. State*, 168 N.J.Super. 202, 402 A.2d 938 (App.Div.1978).

Due process: right to post termination hearing (statutory). *Nicoletta v. No. Jersey District Water Supply Commission*, 77 N.J. 145, 390 A.2d 90 (1978). Concurring and dissenting opinions.

Right to hearing. *Cunningham v. Dept. of Civil Service*, 69 N.J. 13, 350 A.2d 58 (1975).

Hearing de novo on appeal to Merit System Board corrected alleged inadequate notice. *Coley v. Rowan College*, 94 N.J.A.R.2d (CSV) 4.

Absence of timely hearing required dismissal of disciplinary charges. *Marjarum v. Hamilton Township Division of Police*, 93 N.J.A.R.2d (CSV) 143.

Failure to comply with appropriate regulations in seeking to discipline employee. *Hamilton v. Camden Housing Authority*, 93 N.J.A.R.2d (CSV) 85.

Failure to provide employee with notice of dismissal; acts following meeting were not void pursuant to N.J.S.A. 10:4-15. *McManus v. Housing Authority of the City of Englewood*, 92 N.J.A.R.2d (CSV) 747.

Preliminary notice of disciplinary action met minimum discovery requirements. N.J.S.A. 40A:14-147, 11A:2-13. *Gabbianelli v. Monroe Township Police Department*, 91 N.J.A.R.2d (CSV) 79.

4A:2-2.6 Hearings before the appointing authority

(a) The hearing shall be held before the appointing authority or its designated representative.

(b) The employee may be represented by an attorney or authorized union representative.

(c) The parties shall have the opportunity to review the evidence supporting the charges and present and examine witnesses. The employee shall not be required to testify,

but an employee who does testify will be subject to cross-examination.

(d) 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 Final Notice of Disciplinary Action.

Case Notes

Due process. *Carr v. Sharp*, C.A., 454 F.2d 271 (1971).

Requirement of exhaustion of administrative remedies. *City of New Brunswick v. Speights*, 157 N.J.Super. 9, 384 A.2d 225 (Co.1978).

Res judicata: delay in hearing: limits on de novo hearing. In re *Darcy*, 114 N.J.Super. 454, 277 A.2d 226 (1971).

Receipt of second copy of final notice of disciplinary action did not extend time for filing appeal. *Russ v. Human Services Department*, 95 N.J.A.R.2d (CSV) 647.

Public employee voluntarily and deliberately planned his nonappearance at hearing and was not entitled to further hearing. *Cue v. Camden County*, 92 N.J.A.R.2d (CSV) 131.

4A:2-2.7 Actions involving criminal matters

(a) When an appointing authority suspends an employee based on a pending criminal complaint or indictment, the employee must be served with a Preliminary Notice of Disciplinary Action. The notice should include a statement that N.J.S.A. 2C:51-2 may apply to the employee, and that the employee may choose to consult with an attorney concerning the provisions of that statute.

1. The employee may request a departmental hearing within five days of receipt of the Notice. If no request is made within this time, or such additional time as agreed to by the appointing authority or as provided in a negotiated agreement, the appointing authority may then issue a Final Notice of Disciplinary Action under (a)3 below. A hearing shall be limited to the issue of whether the public interest would best be served by suspending the employee until disposition of the criminal complaint or indictment. The standard for determining that issue shall be whether 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.

2. The appointing authority may impose an indefinite suspension to extend beyond six months where an employee is subject to criminal charges as set forth in N.J.A.C. 4A:2-2.5(a)2, but not beyond the disposition of the criminal complaint or indictment.

3. Where the appointing authority determines that an indefinite suspension should be imposed, a Final Notice of Disciplinary Action shall be issued stating that the employee has been indefinitely suspended pending disposition of the criminal complaint or indictment.

(b) The appointing authority shall issue a second Preliminary Notice of Disciplinary Action specifying any remaining charges against the employee upon final disposition of the criminal complaint or indictment. The appointing authority shall then proceed under N.J.A.C. 4A:2-2.5 and 2.6.

(c) Where an employee has pled guilty or been convicted of a crime or offense which is cause for forfeiture of employment under N.J.S.A. 2C:51-2, the departmental hearing shall be limited to the issue of the applicability of N.J.S.A. 2C:51-2. If N.J.S.A. 2C:51-2 is found not applicable, related disciplinary charges, if any, may be addressed at the hearing.

Amended by R.1989 d.569, effective November 6, 1989.

See: 21 N.J.R. 1766(a), 21 N.J.R. 3448(b).

In (a)1: added text, "The standard . . . public services."

Amended by R.1992 d.414, effective October 19, 1992.

See: 24 N.J.R. 2491(a), 24 N.J.R. 3716(a).

Revised (a).

Public Notice: Notice of Receipt of a Petition for Rulemaking.

See: 29 N.J.R. 5333(a).

Case Notes

Forfeiture of public office was not unconstitutional. *State v. Timoldi*, 277 N.J.Super. 297, 649 A.2d 872 (A.D.1994), certification denied 142 N.J. 449, 663 A.2d 1356.

Merit System Board of State Department of Personnel did not have exclusive jurisdiction for prosecution of forfeiture action against senior corrections officer. *State v. Lee*, 258 N.J.Super. 313, 609 A.2d 513 (A.D.1992).

Whether public employee's conviction involves or touches employment does not depend upon whether criminally proscribed acts took place within immediate confines of employment's daily routine. *Moore v. Youth Correctional Institute at Annandale*, 230 N.J.Super. 374, 553 A.2d 830 (A.D.1989), affirmed 119 N.J. 256, 574 A.2d 983.

Senior corrections officer's criminal conviction for harassing his immediate superior was one "involving or touching" his employment. *Moore v. Youth Correctional Institute at Annandale*, 230 N.J.Super. 374, 553 A.2d 830 (A.D.1989), affirmed 119 N.J. 256, 574 A.2d 983.

Automatic termination of correction sergeant based on conviction for crime of dishonesty affirmed. *Christian v. Department of Corrections, Northern State Prison*, 97 N.J.A.R.2d (CSV) 636.

Arrest for possession of illegal drugs provides grounds for blood test and removal. *Pickett v. Department of Corrections*, 97 N.J.A.R.2d (CSV) 546.

Corrections officer's illegal purchase of ammunition justifies removal. *Nelsen v. East Jersey State Prison*, 97 N.J.A.R.2d (CSV) 347.

Corrections officer with drugs in car suffers removal even though criminal action acquits. *Reinhardt v. East Jersey State Prison*, 97 N.J.A.R.2d (CSV) 166.

School district employee removed for arrest on charges of possessing illegal drugs. *Hargrove v. State Operated School District of Newark*, 97 N.J.A.R.2d (CSV) 112.

Corrections officer was not entitled to back pay for period of suspension pending resolution of criminal charges. *Auberzinsky v. Cumberland County Sheriff's Department*, 96 N.J.A.R.2d (CSV) 372.

Public works truck driver dismissed after conviction for offense involving minor child. *Furde v. Hamilton Township Department of Public Works*, 96 N.J.A.R.2d (CSV) 262.

No entitlement to continued employment in sensitive position for employee facing criminal and narcotics charges. *Spellman v. Township of Parsippany-Troy Hills Police Department*, 96 N.J.A.R.2d (CSV) 214.

Where corrections officer's off-duty simple assault on supervisor related to on-duty events, assault constituted insubordination and conduct unbecoming a public employee and warranted dismissal. *Melillo v. Department of Corrections, East Jersey State Prison*, 96 N.J.A.R.2d (CSV) 184.

Corrections officer's conviction for obstruction of justice and driving while under the influence justifies 78-day suspension. *Scott v. Burlington County Jail*, 96 N.J.A.R.2d (CSV) 171.

Criminal convictions result in summary forfeiture of school custodian's position. *Turner v. State-Operated School District of the City of Newark*, 96 N.J.A.R.2d (CSV) 146.

State corrections officer terminated for firing gun during off-duty argument. *Dunns v. Department of Corrections*, 96 N.J.A.R.2d (CSV) 108.

Park maintenance worker forfeits position due to conviction for disorderly persons offense involving dishonesty. *Alzheimer v. County of Middlesex*, 96 N.J.A.R.2d (CSV) 7.

Conviction on plea of guilty to drug offense warranted correction officer's termination. *Ricks v. Department of Corrections*, 95 N.J.A.R.2d (CSV) 441.

Filing of criminal charges directly relating to employment warranted indefinite suspension of safety specialist. *Washington v. Division of Motor Vehicles*, 95 N.J.A.R.2d (CSV) 336.

Indefinite suspension of police officer pending disposition of criminal indictment was not warranted absent evidence that public interest would be served. *Nagy v. Borough of Carteret*, 95 N.J.A.R.2d (CSV) 224.

Correction officer's termination justified; shooting of companion with stun gun. *Curry v. Burlington County Jail*, 95 N.J.A.R.2d (CSV) 92.

Conviction on plea of guilty to charge of conspiring to sell a false document of age was cause for forfeiture of correction officer's public employment. *State Department of Corrections v. Gomez*, 95 N.J.A.R.2d (CSV) 77.

Suspension; pendency of criminal charges. *Abdunafi v. East Jersey State Prison*. 94 N.J.A.R.2d (CSV) 653.

Suspension and removal of public employee convicted of a crime was justified. *DeLeone v. Essex County*, 94 N.J.A.R.2d (CSV) 544.

Automatic forfeiture of employment upon conviction. *Hudson County v. Seinfeld*, 94 N.J.A.R.2d (CSV) 516.

Suspension pending disposition of criminal complaint was in the public's interest. *Lordi v. Woodbridge Township*, 94 N.J.A.R.2d (CSV) 540.

Automatic forfeiture of employment upon conviction. *City of Bayonne Department of Public Works v. Timoldi*, 94 N.J.A.R.2d (CSV) 511.

Indefinite suspension was justified pending disposition of criminal charges. *Gonzalez v. Essex County Welfare Board*, 94 N.J.A.R.2d (CSV) 451.

Conviction on federal drug-related charges effected a forfeiture of positions. *Roman v. Atlantic City Police Department*, 94 N.J.A.R.2d (CSV) 250.

Automatic forfeiture of public employment upon criminal conviction of the third degree under N.J.S.A. 2C:51-2. *Coxson v. Newark Board of Education*, 94 N.J.A.R.2d (CSV) 129.

Pharmacist suspended indefinitely without pay pending disposition of criminal charges. *Grillo v. Bergen Pines County Hospital*, 94 N.J.A.R.2d (CSV) 81.

Guilty plea; however consideration of mitigating factors warranted the maximum suspension rather than permanent removal. *Walcott v. City of Plainfield*, 94 N.J.A.R.2d (CSV) 65.

Suspension pending resolution of criminal charges was appropriate; however, termination was not justified. *Walcott v. City of Plainfield*, 94 N.J.A.R.2d (CSV) 65.

Indictment justified suspension of welfare supervisor. *Jersey City Welfare Board v. Miller*, 94 N.J.A.R.2d (CSV) 55.

Forfeit of public employment; conviction of drug and alcohol-related offenses. *Greystone Park Psychiatric Hospital*, 94 N.J.A.R.2d (CSV) 14.

Termination; conduct unbecoming a public employee; physical attack by two employees on another employee. *Bryson v. Division of Motor Vehicles*, 94 N.J.A.R.2d (CSV) 1.

Hospital employee was entitled to back pay, seniority and benefits following dismissal of indictment. *Gillard v. Trenton Psychiatric Hospital*, 93 N.J.A.R.2d (CSV) 730.

Employee forfeited employment upon pleading guilty to criminal charges. *Martin v. North Princeton Developmental Center*, 93 N.J.A.R.2d (CSV) 675.

Police officer automatically forfeited position; criminal conviction. *Lehman v. Woodbridge Township Police Department*, 93 N.J.A.R.2d (CSV) 599.

Indefinite suspension pending disposition of sexual assault charges. *Vengenock v. Salem County*, 93 N.J.A.R.2d (CSV) 558.

Six-month suspension was warranted for conviction of a motor vehicle violation. *Turner v. Department of Higher Education*, 93 N.J.A.R.2d (CSV) 440.

Public employment; convictions of third-degree crimes. N.J.S.A. 2C:51-2. *Williams v. Marlboro Psychiatric Hosp., State Dept. of Human Services*, 93 N.J.A.R.2d (CSV) 421.

Convictions forfeited public employment. *Williams v. Marlboro Psychiatric Hospital*, 93 N.J.A.R.2d (CSV) 421.

Suspended employee did not resign by failure to report dismissal of criminal charges. *McCray v. Department of the Treasury*, 93 N.J.A.R.2d (CSV) 363.

Possession of controlled dangerous substance warranted removal. *Hickman v. Marlboro Psychiatric Hospital*, 93 N.J.A.R.2d (CSV) 356.

Indefinite suspension of employee pending disposition of criminal charges was proper. *Simeone v. Woodbridge Township Department of Public Works*, 93 N.J.A.R.2d (CSV) 340.

Continuation of suspension of correction officer until disposition of criminal charges ordered. *Rivera v. New Jersey Training School for Boys—Jamesburg*, 93 N.J.A.R.2d (CSV) 219.

Guilty plea constituted a forfeiture of position. *Watkins v. Bergen Pines County Hospital*, 92 N.J.A.R.2d (CSV) 768.

Issue of whether suspension was in the public interest was rendered moot by resignation. *Coleman v. Dept. of Public Works, Borough of Ringwood*, 92 N.J.A.R.2d (CSV) 510.

Guard was properly suspended pending outcome of charges. *Alton v. Newark Board of Education*, 92 N.J.A.R.2d (CSV) 478.

Suspension of youth worker was warranted pending disposition of criminal charge. *Moore v. Division of Youth and Family Services*, 92 N.J.A.R.2d (CSV) 433.

County employee forfeited her office as a result of conviction. *Starling v. Essex County Citizen Services, Division of Welfare*, 92 N.J.A.R.2d (CSV) 431.

Indefinite suspension of police officer was warranted. *Beck v. City of Trenton*, 92 N.J.A.R.2d (CSV) 411.

Forfeit of position; criminal conviction. *Rivera v. City of Bridgeton*, 92 N.J.A.R.2d (CSV) 311.

Indefinite suspension; criminal charges. *Smith v. Essex County Judiciary*, 92 N.J.A.R.2d (CSV) 271.

Indefinite suspension; disposition of charges. *Naro v. The Fire Division of the Department of Public Safety of the City of Trenton*, 92 N.J.A.R.2d (CSV) 211.

School bus driver disqualified from school employment due to drug offense. *Kovalak v. New Jersey State Department of Education*, 97 N.J.A.R.2d (EDU) 456.

School superintendent dismissed due to unbecoming conduct. In the Matter of the Tenure Hearing of Robert R. Vitacco, 97 N.J.A.R.2d (EDU) 449.

Acquitted school custodian was entitled to back pay but agreement with counsel for reimbursement of attorney fees was not binding on the school board. *Griffin v. Board of Education of the City of Paterson*, 93 N.J.A.R.2d (EDU) 882.

4A:2-2.8 Appeals to Merit System Board

(a) An appeal from a Final Notice of Disciplinary Action must be filed within 20 days of receipt of the Notice by the employee. Receipt of the Notice on a different date by the employee's attorney or union representative shall not affect this appeal period.

(b) If the appointing authority fails to provide the employee with a Final Notice of Disciplinary Action, an appeal may be made directly to the Board within a reasonable time.

(c) The appeal shall be substantially similar in format to the Major Disciplinary Appeal Form illustrated in the subchapter Appendix, incorporated herein by reference, and the employee shall provide a copy of the appeal to the appointing authority. The employee shall attach to the appeal a copy of the Preliminary Notice of Disciplinary Action and, unless (b) above is applicable, the Final Notice of Disciplinary Action. The appeal shall also include the following information:

1. The name, title, mailing address and telephone number of the appointing authority representative to whom the notices were provided;
2. The employee's name, mailing address and telephone number; and
3. The action that is being appealed.

(d) The employee should also include a statement of the reason(s) for the appeal and the requested relief.

(e) Failure of an employee to provide the information specified in (c) above shall not result in dismissal of the appeal, but shall delay processing of the appeal until the required information is provided, and may result in a reduced back pay award pursuant to N.J.A.C. 4A:2-2.10(d)4.

Amended by R.1995 d.416, effective August 7, 1995.
See: 27 N.J.R. 1837(b), 27 N.J.R. 2884(b).

In (a), added the provision governing receipt of notice by the employee's attorney or union representative.
Amended by R.1998 d.518, effective November 2, 1998.

See: 30 N.J.R. 2325(a), 30 N.J.R. 3935(a).
Added (c) through (e).

Case Notes

Remand to Commission for supplemental hearing. *Dept. of Law and Public Safety v. Miller*, 115 N.J.Super. 122, 278 A.2d 495 (App.Div. 1971).

Receipt of second copy of final notice of disciplinary action did not extend time for filing appeal. *Russ v. Human Services Department*, 95 N.J.A.R.2d (CSV) 647.

Terminated employee did not file an objection to the employer's action in terminating her employment within reasonable period of time. *Gibbons v. Vineland Developmental Center*, 92 N.J.A.R.2d (CSV) 491.

Charges against psychiatric hospital worker would be dismissed where alleged victim left the state and could not be located. *Godwin v. Marlboro Psychiatric Hosp.*, 92 N.J.A.R.2d (CSV) 96.

4A:2-2.9 Board hearings

(a) Requests for a Board hearing will be reviewed and determined by the Commissioner or Commissioner's designee.

(b) Major discipline hearings will be heard by the Board or referred to the Office of Administrative Law for hearing before an administrative law judge. See N.J.A.C. 1:1-1.1 et seq. for OAL hearing procedures.

(c) The Board may adopt, reject or modify the recommended report and decision of an administrative law judge. Copies of all Board decisions shall be served personally or by regular mail upon the parties.

(d) The Board may reverse or modify the action of the appointing authority, except that removal shall not be substituted for a lesser penalty.

Amended by R.1995 d.417, effective August 7, 1995.
See: 27 N.J.R. 1838(a), 27 N.J.R. 2885(a).

In (a), substituted the Commissioner or the Commissioner's designee for the Board as the party that does the review.

Case Notes

Civil Service Commission's duty to review findings of administrative law judge prior to acceptance or rejection of judge's recommendations (citing former rule N.J.A.C. 4:1-5.4). In the Matter of Morrison, 216 N.J.Super. 143, 523 A.2d 238 (App.Div.1987).

Removal hearing—employee service record must be in evidence (citing former N.J.A.C. 4:1-16.9). In the Matter of Parlow, 192 N.J.Super. 247, 469 A.2d 940 (App.Div.1983).

Entitlement to hearing as matter of fundamental fairness. *Cunningham v. Dept. of Civil Service*, 69 N.J. 13, 350 A.2d 58 (1975).

Receipt of second copy of final notice of disciplinary action did not extend time for filing appeal. *Russ v. Human Services Department*, 95 N.J.A.R.2d (CSV) 647.

County sheriff's officer was required by settlement agreement to submit to psychiatric examinations. *Petescia v. County of Essex*, 92 N.J.A.R.2d (CSV) 388.