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This opinion shall not "constitute precedent or be binding upon any court."  
Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-4310-15T4

CHARLES PETTIFORD,

Plaintiff-Appellant,

and

LANISHA MAKLE,

Plaintiff,

v.

CITY OF PATERSON and MUNICIPAL  
COUNCIL OF THE CITY OF PATERSON,  
COUNCIL PRESIDENT ANTHONY DAVIS,  
and COUNCIL MEMBERS ASLON GOOW,  
WILLIAM C. MCKOY, KENNETH MORRIS,  
RIGO RODRIGUES, ANDRÉ SAYEGH, and  
JULIO TAVAREZ in their official  
capacities,

Defendants-Respondents.

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Submitted March 6, 2018 - Decided April 5, 2018

Before Judges Reisner, Hoffman, and Mayer.

On appeal from Superior Court of New Jersey,  
Law Division, Passaic County, Docket No.  
L-3170-12.

Eric M. Bernstein & Associates, LLC, attorneys for appellant (Eric M. Bernstein, of counsel and on the briefs; Philip G. George, on the briefs).

DeMarco & DeMarco, attorneys for respondent Municipal Council of the City of Paterson; and Sciro & Marotta, PC, attorneys for respondent City of Paterson (Michael P. DeMarco and Jonathan W. Marotta, on the joint brief).

PER CURIAM

Plaintiff Charles Pettiford appeals from a February 4, 2016 order dismissing his action in lieu of prerogative writs and dismissing five of the six counts in his complaint alleging due process violations.<sup>1</sup> We affirm.

Plaintiff sought to void a resolution adopted by defendant Municipal Council of the City of Paterson (Council) terminating his employment with defendant City of Paterson (City). Plaintiff alleged his termination was a violation of his substantive and procedural due process rights. Specifically, plaintiff argued the Council acted arbitrarily and capriciously by: (1) failing to provide adequate notice of the meeting in which the termination resolution was adopted; and (2) basing its decision on a written report that plaintiff was unable to review or challenge. Plaintiff also challenged the investigation by an independent committee, the

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<sup>1</sup> Plaintiff stipulated to dismissal of the sixth count to perfect his right to appeal.

Committee of the Whole (Committee), resulting in a report that formed the basis for the Council's termination of plaintiff.

Plaintiff filed a verified complaint and action in lieu of prerogative writs on July 30, 2012. On November 30, 2015, Assignment Judge Ernest M. Caposela heard argument on the action in lieu of prerogative writs. In a written opinion, Judge Caposela determined that the Council did not violate plaintiff's due process rights and dismissed plaintiff's complaint.

The facts giving rise to plaintiff's claims are straightforward. In 2010, plaintiff served as Chief of Staff and Confidential Aide to the Mayor of Paterson. In August and September 2011, the City was struck by Hurricane Irene and Tropical Storm Lee. On October 11, 2011, the Council appointed the Committee to investigate alleged improper overtime payments to City employees for work relating to the storms.

As part of its investigation into the overtime payments, the Committee held seven public hearings. The Committee heard testimony and collected evidence from sixteen City employees, including plaintiff, who were subpoenaed to give testimony before the Committee.

In January 2012, the Committee issued a report containing its findings and recommendations. The Committee found plaintiff "falsely testified" about his involvement in approving overtime

payments; made claims about his own eligibility for overtime that were "without merit and false"; was "purposefully supercilious and evasive" in his testimony; may have "acted without the consent of his direct supervisor" and "gross[ly] misrepresent[ed] . . . his authority"; and was unable to "clearly define [his] role, duties, responsibilities, and job function(s)," indicating that his job was "superfluous and question[ed] the need for such a taxpayer supported position." Based on these findings, the Committee recommended that plaintiff be terminated from his City job.

On May 23, 2012, the City Clerk sent a Rice<sup>2</sup> notice to plaintiff, by regular and certified mail, advising that the Council would hold a special session meeting on June 7, 2012, to discuss "possible official action" related to plaintiff's employment with the City. The day before the scheduled Council meeting, the City's Mayor filed a complaint and order to show cause (OTSC), seeking to restrain the Council from conducting a hearing or imposing discipline against City employees related to the storm overtime payments. The Mayor's OTSC application was signed by the court

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<sup>2</sup> Rice v. Union Cty. Reg'l High Sch. Bd. of Educ., 155 N.J. Super. 64 (App. Div. 1977).

on June 7, 2012.<sup>3</sup> As a result, the Council adjourned its June 7, 2012 special session meeting.

On June 8, 2012, the City Clerk mailed a new Rice notice to plaintiff advising him that the Council would conduct a special session meeting on June 13, 2012, to discuss his employment. That same day, the City Clerk twice attempted to personally serve the Rice notice on plaintiff. Plaintiff rejected both attempts at personal service of the Rice notice. The City Clerk also attempted to personally serve plaintiff's then attorney, who refused to accept the Rice notice.

The Council proceeded with the June 13 special session meeting to discuss plaintiff's employment. Although plaintiff did not attend the meeting, his attorney, Neal Brunson, appeared. Brunson told the Council that he was present "to preserve the rights of [plaintiff] as it relates to the timeliness of [the] Rice notice." Counsel argued that plaintiff was not served with the Rice notice. Brunson declined to participate in the discussion of plaintiff's employment or cross-examine the representative from the City Clerk's office regarding service of the Rice notice on plaintiff. The Council informed Brunson that despite plaintiff's improper

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<sup>3</sup> The court denied the relief sought in the Mayor's OTSC on June 13, 2012.

service argument, the Council would deliberate in closed session, consistent with City requirements for discussions related to personnel matters, and then return to vote in open session. Plaintiff's counsel responded, "[w]ell, I think that's fine." The Council invited Brunson to stay for the closed session portion of the meeting discussing plaintiff's employment. Brunson replied, "[n]o, I'm going to go with the leave of this [C]ouncil." The Council went into closed session and discussed plaintiff's employment. After the Council returned to the public portion of the meeting, it terminated plaintiff's employment.

Our review of an action in lieu of prerogative writs challenging the decision of a municipal body follows the same standard as the trial court in determining whether the municipal body acted "arbitrarily, capriciously, or unreasonably." Ten Stary Dom P'ship v. Mauro, 216 N.J. 16, 33 (2013); see also Cohen v. Bd. of Adjustment, 396 N.J. Super. 608, 614–15 (App. Div. 2007) ("When we consider an appeal of a trial court's review of a municipal board's action, we are bound by the same standard as the trial court."). "If we find sufficient credible, competent evidence in the record to support the agency's conclusion, we are bound to uphold the agency's findings." In re Cty. of Essex, 299 N.J. Super. 577, 591 (App. Div. 1997).

Plaintiff argues the Council's resolution terminating his employment was arbitrary and capricious. Plaintiff also claims his due process rights were violated by the Council and the Committee. In addition, plaintiff contends the Council violated the Open Public Meetings Act, N.J.S.A. 10:4-1 to -21 (OPMA), by failing to issue Rice notices for the Committee's investigatory hearings, and failing to properly notify him of the Council's June 13 special session meeting.

We reject plaintiff's arguments and affirm for the reasons set forth in Judge Caposela's thorough and well-reasoned written opinion dated February 4, 2016. We add only the following brief comments.

Plaintiff evaded all attempts at personal service of the Rice notice by the City Clerk's office. There is nothing in the record refuting mail service of the Rice notice upon plaintiff. Plaintiff's attorney appeared at the special session meeting of the Council on June 13, 2012, and was afforded an opportunity to challenge the testimony proffered by a representative of the City Clerk's office as to service of the Rice notice and plaintiff's efforts to avoid personal service of the Rice notice. Plaintiff's attorney declined to participate in the proceeding before the Council. Plaintiff chose not to take advantage of the opportunity offered by the Council to challenge the Committee's findings and

recommendations or to confront any witnesses who testified against plaintiff related to the overtime payments. Plaintiff was accorded all process that was due, and cannot complain when he elected not to participate.

Plaintiff raises several issues for the first time on appeal. We "decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest." U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 483 (2012) (quoting Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973)). Because the issues raised by plaintiff on appeal do not address the jurisdiction of the trial court or concern a matter of public interest, we decline to address those issues.

The remainder of plaintiff's arguments lack sufficient merit to warrant further comment. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION