

**IN THE COURT OF APPEALS OF IOWA**

No. 8-240 / 07-1101

Filed July 16, 2008

**PATRICK J. LUCKRITZ,**  
Respondent/Cross-Petitioner-Appellant,

**vs.**

**CITY OF CAMANCHE, IOWA,**  
Petitioner/Cross-Respondent-Appellee,

**THE CIVIL SERVICE COMMISSION FOR  
THE CITY OF CAMANCHE, IOWA,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Clinton County, Gary D. McKenrick, Judge.

Patrick Luckritz appeals from the ruling appealing his termination as a City of Camanche police officer. **AFFIRMED.**

Pamela Walker of Sherinian & Walker, P.C., West Des Moines, for appellant.

Mary Wolfe of Wolfe Law Office, Iowa City, for appellee and Thomas Lonergan of Mayer, Mayer, Lonergan & Rolfes, Clinton.

City of Camanche Civil Service, c/o Sheryl Gindrich, Clerk, Camanche, pro se appellee.

Heard by Vogel, P.J., and Zimmer, J. and Nelson, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

**VOGEL, P.J.**

Patrick Luckritz was terminated from his position as a City of Camanche police officer on June 29, 2006. Luckritz appealed his termination to the City of Camanche Civil Service Commission, which after a hearing reversed the termination and reinstated him with a thirty-day suspension. It also required him to apologize to the Clinton County Attorney for certain complaints he made about the office. The City of Camanche appealed the Commission's decision to the district court. The court later reversed the Commission's ruling and ordered that Luckritz be terminated from employment. Luckritz appeals from that ruling.

**Background Facts.**

Luckritz began his employment with Camanche in 1997. In November 2005, he responded to a report of several teenage girls fighting. Luckritz investigated and filed his affidavit and complaint with the Clinton County Attorney's Office on December 7, 2005. In mid-December, Luckritz came into contact with the parents of a girl who was injured in the fight. As the parents had heard nothing further regarding the case, Luckritz told them he would contact the county attorney to find out the status of the charges. Upon contacting Ross Barlow, the assistant county attorney who was in charge of the case, Luckritz was informed Barlow had not been able to work on the case yet but would be getting to it soon.

Again in mid-January, Luckritz came in contact with the victim's father, who expressed frustration over the perceived delay in filing charges. So, on January 23, 2006, Luckritz contacted Clinton County Attorney Mike Wolf regarding what he also considered an unreasonable delay in filing charges. He

asked Wolf to “kick [Barlow] in the butt and get him moving.” The following day Barlow contacted Luckritz and asked him to obtain medical release forms signed by the victim. On January 25, 2006, Luckritz conferred with a part-time magistrate and expressed concerns about what he considered to be unethical conduct in the county attorney’s office. On January 26, Luckritz confronted Barlow at his office and, sensing a condescending tone from Barlow, Luckritz expressed “disgust” with the delay in filing charges. Assistant County Attorney Robin Strausser overheard the confrontation, and she described Luckritz’s conduct as “irrational, completely unprofessional.”

Within the next couple of days, a criminal complaint was filed regarding the fight and an arrest warrant issued for Toshia Seamster. Upon discovering that Seamster had been allowed to turn herself in and immediately post bond, Luckritz became angry and accused Barlow of acting inappropriately in delaying the filing of charges and negotiating with defense counsel prior to the filing of the charges. These events led Luckritz to complain to the Iowa Attorney General’s Office in an email sent from his personal email account. The following day an assistant attorney general responded to the complaint, essentially advising that what the Clinton County Attorney’s Office had done was neither unethical, uncommon, nor inappropriate. After hearing about the complaint and Luckritz’s confrontation with Barlow, County Attorney Wolf requested that Luckritz only contact his office through police Chief Houzenga. Houzenga advised Luckritz that he would deal with the county attorney’s office.

In spite of Houzenga’s direction, Luckritz directly emailed Assistant County Attorney Strausser, asking her “[i]f you are able to talk to me let me know.”

Strausser found this email troubling and passed it along to Wolf, who viewed it as an attempt by Luckritz to create division in his staff. A few days later, Luckritz attempted to contact Strausser by phone, but was informed by office staff that the county attorney's office is not to have contact with him except through Luckritz's supervisor.

After an additional, unsuccessful contact with the Attorney General's office, Luckritz filed a written complaint with the Iowa Supreme Court Attorney Disciplinary Board accusing Barlow of unethical conduct in entering into discussions with defense counsel. He also asserted a violation of his own rights, by being essentially banned from the county attorney's office. The first complaint was nearly identical to his complaint to the Attorney General's Office.

As a part of the investigation of the assault incident, Luckritz had issued a citation for the violation of curfew to Brittany Clark. Clark is also a witness for the State in the criminal case against Toshia Seamster. On February 9, 2006, Luckritz failed to appear and testify in Clark's trial. As a result, her charges were dismissed. Also, around that time Luckritz had filed a complaint concerning an individual named Jaycob Pell. The county attorney's office returned the matter to the police department asking that the complaint be modified to show the offense as an aggravated misdemeanor rather than a class "D" felony. With raised suspicions about the request, Luckritz initially refused to amend the complaint and continued his refusal even after Chief Houzenga instructed him to do so. Eventually, the complaint was amended, but with editorializing on two of the affidavits, essentially voiding the complaint for filing.

On March 17, 2006, Houzenga placed Luckritz on “relief of duty” status pending an investigation of his conduct. As a result of this investigation, Luckritz was terminated based on six specific counts of misconduct. The City of Camanche Civil Service Commission reversed the termination; the district court later reversed the Commission’s ruling and ordered that Luckritz be terminated from employment. Luckritz appeals from that ruling.

**Scope and Standards of Review.**

Iowa Code section 400.19 (2005) vests police chiefs with authority to peremptorily suspend, demote, or discharge a subordinate officer “for neglect of duty, disobedience of orders, misconduct, or failure to properly perform the subordinate’s duties.” The supreme court has determined that a chief’s suspension or dismissal must be for “conduct detrimental to the public interest.” *Borlin v. Civil Serv. Comm’n*, 338 N.W.2d 146, 148 (Iowa 1983); *Millsap v. Civil Serv. Comm’n*, 249 N.W.2d 679, 687 (Iowa 1977). To ensure that a chief’s disciplinary decision is supported by substantial evidence, chapter 400 provides for an evidentiary hearing both before the Civil Service Commission and again, de novo, in the district court. See Iowa Code § 400.27; *Bevel v. Civil Serv. Comm’n*, 426 N.W.2d 380, 382 (Iowa 1988). This statutory scheme serves to protect civil service employees from arbitrary sanctions by their superiors. *Id.* Under section 400.27, the commission and court are free to make an independent determination regarding the disciplinary measures taken. *In re Kjos*, 346 N.W.2d 25, 29 (Iowa 1984). Therefore, we are not obliged to presume the correctness of the chief’s decision, but must determine anew whether the evidence as a whole justifies an officer’s discharge. *Sieg v. Civil Serv. Comm’n*,

342 N.W.2d 824, 829 (Iowa 1983). “On de novo review we independently construe the factual record as a whole to determine if the officer’s discipline was warranted.” *Id.*

### **Analysis.**

*I. Iowa Whistleblower’s Act.* Luckritz first claims the “district court erred in failing to find [his] employment termination was a violation of the Iowa Whistleblower’s Act.” Iowa Code section 70A.29(1), in pertinent part, provides:

A person shall not discharge an employee from or take or fail to take action regarding an employee’s appointment or proposed appointment to, promotion or proposed promotion to, or any advantage in, a position in employment by a political subdivision of this state as a reprisal for a disclosure of any information by that employee to a member or employee of the general assembly, or an official of that political subdivision or a state official or for a disclosure of information to any other public official or law enforcement agency if the employee reasonably believes the information evidences a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

“[T]he overall scheme of the statute establishes a public policy against retaliatory discharge of public employees and considers the violation of the policy to be a public harm.” *Worthington v. Kenkel*, 684 N.W.2d 228, 233 (Iowa 2004). It provides “an umbrella of protection from retaliatory discharge for all state workers and prohibits actions by those who exercise governmental authority from undermining this public policy and from stifling whistle-blowers in the workplace.” *Id.*

The district court determined the initial complaint from Luckritz to the Attorney General’s office “can form no basis for any disciplinary action against [him].” We concur, and therefore do not consider this complaint in deciding

whether the termination was appropriate. However, the district court further concluded the subsequent complaint to the Iowa Supreme Court Attorney Disciplinary Board was not conduct protected by section 70A.29. Again, we agree with this determination. The statute, in pertinent part, provides that a person shall not be discharged based on a disclosure of information if “the employee *reasonably* believes” the information evidences a violation of law or an abuse of authority. Thus, the reasonableness of Luckritz’s actions is at issue.

As previously stated, the complaint of unethical conduct to the disciplinary board was nearly identical in form and content to Luckritz’s previous complaint to the Iowa Attorney General. In response to the first complaint, the Attorney General’s office informed Luckritz that the issues he complained of were neither uncommon nor unethical. In a thorough and detailed email, Assistant Attorney General Thomas H. Miller informed Luckritz that delays in charging decisions may actually increase the likelihood of a successful criminal prosecution. He further informed Luckritz that contact between a prosecutor and an attorney representing a potential criminal defendant, prior to the filing of official charges, is done by virtually every experienced prosecutor from time to time and may, in fact, constitute an ethical responsibility to consider “the other side of the story.”

Despite this unambiguous pronouncement from the office of the chief law enforcement officer in the state that nothing was amiss in the conduct of Barlow and Wolf, Luckritz persisted by filing a further ethics complaint with the Iowa Supreme Court Attorney Disciplinary Board. He then added the second complaint, that he was essentially banned from the county attorney’s office, because he persisted in his core complaints of unethical conduct. Upon our de

novo review, we agree with the assessment and advice given by Assistant Attorney General Miller that on the record before us, neither Barlow's nor Wolf's actions were unethical. We thus conclude that at the time of filing the second complaint, Luckritz did not hold a *reasonable* belief that the conduct of Barlow or Wolf evinced a violation of Iowa law or prosecutorial ethics. Accordingly, we may consider the complaint filed with the Iowa Supreme Court Attorney Disciplinary Board and Luckritz's conduct stemming from that complaint in assessing the propriety of his termination.

*II. Cause for Termination.* Luckritz next maintains the City did not have just cause to terminate his employment as required under the Civil Service Act. In particular, he contends the city failed to establish he violated any rules or engaged in any misconduct that "even remotely warrants his termination."

For us to uphold the termination of a civil service employee, the city must prove misconduct which is detrimental to the public service. See Iowa Code § 400.19. A police chief has authority to "peremptorily suspend, demote or discharge a subordinate" for "misconduct." *Id.* The term "misconduct" has no fixed meaning, but is broad enough to include relatively minor or innocuous behavior as well as flagrant and injurious breaches of decorum. *Sieg*, 342 N.W.2d at 829. To support suspension or dismissal, the misconduct must be "detrimental to the public interest." *City of Des Moines v. Civil Serv. Comm'n*, 513 N.W.2d 746, 748 (Iowa 1994). Police officers are expected to conduct themselves with "good character, sobriety, judgment and discretion." *Civil Serv. Comm'n v. Johnson*, 653 N.W.2d 533, 537 (Iowa 2002).



We therefore review the record evidence offered in support of the termination. First, we find at least two instances of insubordination to superiors. When Luckritz twice contacted Assistant County Attorney Strausser, he was clearly insubordinate considering Chief Houzenga's explicit direction that Luckritz was not to have any communication with the county attorney's office except through him. In addition, Luckritz was insubordinate when he was requested to amend a certain complaint and refused to do so except on his terms, which included extraneous comments, invalidating the complaint.

Luckritz's conduct also demonstrated a disregard for his superiors in the police department and the attorneys in the county attorney's office. While he testified that it was his normal practice to submit charging documents to the county attorney's office, without further monitoring, in this case, he placed himself unnecessarily in the workings of the prosecution. His resulting confrontation with Barlow was unprofessional, disrespectful, and inappropriate, which spread to the rest of the county attorney's office as his contacts persisted. His refusal to follow the Chief of Police's directive to amend complaints as instructed by the county attorney's office was likewise unprofessional. These actions caused a temporary rift between the two law enforcement entities in Clinton County, requiring the Chief of Police to smooth over the situation to avoid further disruption with the ability to prosecute cases.

We find Luckritz was also guilty of neglect of duty when he failed to appear for the trial of Brittany Clark, a girl who had been charged with a curfew violation and was scheduled to testify against Toshia Seamster. Although he called in sick for his shift later in the day, he failed to notify anybody in advance

that he was unable to attend the earlier hearing. This caused charges to be dismissed.

Accordingly, upon our de novo review, we find the record establishes neglect of duty, misconduct, and insubordination. While Luckritz may have had good intentions, his conduct was ultimately detrimental to the public interest, and fully warranted the termination of Luckritz's employment as a Camanche police officer. We therefore affirm the district court order.

**AFFIRMED.**