

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 CA 0673

TOMMY MORRISON

VERSUS

BATON ROUGE POLICE DEPARTMENT AND THE BATON ROUGE
MUNICIPAL FIRE AND POLICE CIVIL SERVICE BOARD

DATE OF JUDGMENT: DEC 21 2007

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
(NUMBER 540,420 "J-25"), PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE CURTIS A. CALLOWAY, JUDGE

* * * * *

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* * * * *

BEFORE: PARRO, KUHN AND DOWNING, JJ.

Disposition: AFFIRMED.

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Kuhn, J.

Plaintiff, Tommy Morrison, appeals the district court's judgment that affirmed a decision of the Municipal Fire and Police Civil Service Board for the City of Baton Rouge ("the Board"). The Board upheld Chief Greg Phares' decision to terminate Morrison's employment with the Baton Rouge Police Department ("the Department"). For the following reasons, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

Morrison was employed as a police officer with the Department and worked in the evidence room for many years.¹ In early 2000, the Department learned that Morrison and his supervisor, Sergeant Robert McGehee, had released many firearms from the evidence room rather than destroying them, as ordered by the district court, after they were no longer needed as evidence. Morrison acknowledged that he obtained several of these guns and had personally profited by selling some of them.² He also knew that other guns had been released to McGehee, an assistant district attorney, and other police officers. Morrison admitted that based on his supervisor's instructions, he did not update the Department's computer system to accurately reflect these releases. As a result, the computer records showed many of these guns had been destroyed. Morrison admitted that he acquiesced in maintaining the inaccurate records, and he also failed to report this practice to Chief Phares.

After an internal investigation regarding the release of the firearms, Chief Phares sent Morrison a letter notifying him that a pre-termination hearing would be held to consider disciplinary action for his alleged violations of Department policy

¹ Morrison was a corporal when he was terminated.

² Morrison acknowledged these sales occurred, he had not kept any record of the sales, and he had not updated evidence room records to reflect these transactions.

and state civil service law.³ Based on Morrison's testimony at this hearing and the results of the internal investigation, Chief Phares terminated Morrison's employment in June 2000 for violations of the Department's Policies and Procedures Manual Disciplinary Code, Section XII, "Disciplinary Articles," subsections 0:0 and 2:10⁴ and La. R.S. 33:2500(A)(1), (3), and (15).⁵

Morrison appealed his termination to the Board. After hearing the testimony of Chief Phares, Morrison, several police officers, and other civilians, the Board

³ Morrison and McGehee were the subjects of the internal affairs investigation, and both were terminated.

⁴ The Department's Policies and Procedures Manual Disciplinary Code, Section XII, "Disciplinary Articles," subsections 0:0 and 2:10 were quoted in Morrison's termination letter as follows:

0:0 Violators Subject to Disciplinary Action

All members of the [Department], regardless of rank or assignment, are subject to disciplinary action for any violation of the rules, procedures or department policy contained herein or in other procedural manuals issued by the Department. It is not necessary the violation be intentional, but may be by omission or failure.

2:10 Conduct Unbecoming an Officer

Every member of the Department, whether on or off duty, in an official or unofficial capacity, must conduct himself at all times in such a manner as to set a good example for all others with whom he may come in contact. He shall in no way, through actions or neglect, bring dishonor or disgrace upon himself or the [Department].

⁵ Louisiana Revised Statutes 33:2500(A), in pertinent part, provides:

The tenure of persons who have been regularly and permanently inducted into positions of the classified service shall be during good behavior. However, the appointing authority may remove any employee from the service, or take such disciplinary action as the circumstances warrant in the manner provided below for any one of the following reasons:

(1) Unwillingness or failure to perform the duties of his position in a satisfactory manner.

...

(3) The commission or omission of any act to the prejudice of the departmental service or contrary to the public interest or policy.

...

(15) Any other act or failure to act which the board deems sufficient to show the offender to be an unsuitable or unfit person to be employed in the respective service.

voted to uphold the termination. Morrison then filed a petition for judicial review in the district court, seeking rescission of the Board's action and praying for an order reinstating his employment with retroactive wages and benefits. After hearing the matter, the district court signed a judgment in favor of the Department that affirmed the Board's decision to uphold Morrison's termination. Morrison has appealed, urging that the Board and the district court erred in finding that Chief Phares acted in good faith and with just cause in terminating his employment.

II. ANALYSIS

The present case is governed by the Municipal Fire and Police Civil Service Law. La. R.S. 33:2471 et seq.⁶ Any regular employee in the classified service, who feels that he has been discharged or subjected to any corrective or disciplinary action without just cause, may demand a hearing and an investigation by the Board to determine the reasonableness of the action. La. R.S. 33:2501(A). The Board may, if the evidence is conclusive, affirm the action of the appointing authority. If it finds that the action was not taken in good faith for cause, the Board shall order the immediate reinstatement or reemployment of such person. La. R.S. 33:2501(C).

Any employee under classified service may appeal from any decision of the Board that is prejudicial to him. La. R.S. 33:2501(E)(1). The district court shall hear the matter in a summary manner, and its review of the Board's action is limited to a finding of whether the Board's decision was made "in good faith for cause." La. R.S. 33:2501(E)(2) and (3); *Moore v. Ware*, 01-3341, p. 7 (La. 2/25/03), 839 So.2d 940, 945.

⁶ Louisiana Revised Statutes 33:2471-2508 are within the section entitled "Part II. Fire and Police Civil Service Law for Municipalities between 13,000 and 250,000" but apply to municipalities having a population between 250,000 and 500,000, as well. See La. R.S. 33:2591, La. Const. 1921, Art. XIV, § 15.1, and La. Const. 1974, Art. X, § 18.

If made based on good faith and statutory cause, a decision of the Board cannot be disturbed on judicial review. Good faith does not occur if the appointing authority acted arbitrarily or capriciously, or as the result of prejudice or political expediency. *Id.* Arbitrary or capricious means the lack of a rational basis for the action taken. The district court and appellate courts should accord deference to a civil service board's factual conclusions and must not overturn them unless they are manifestly erroneous. *Id.* at 01-3341 at pp. 7-8, 839 So.2d at 946.

On appeal, Morrison contends the Board's decision to terminate him was arbitrary and capricious. He urges the evidence revealed that his actions were either identical or similar to those of his co-workers who were not terminated. He also generally contends the Department did not establish that he had violated "any policies or procedures governing the release of firearms set for destruction."

Corporal Jonathan Dunham, an investigator with the Internal Affairs Division of the Department, testified at the hearing before the Board that Morrison had obtained various guns from the evidence room by obtaining release orders from an assistant district attorney. Corporal Dunham discovered that the assistant district attorney had obtained release forms that were "pre-stamped" by judges from the district court. The assistant district attorney had told Morrison and McGehee that they could pick out the guns they wanted, fill out the release form, and take possession of the guns.⁷ Corporal Dunham learned that Morrison had received six "evidence" guns from the assistant district attorney as "gifts." Although the guns had been ordered to be destroyed, Morrison received a release form from the

⁷ Morrison acknowledged observing that the assistant district attorney had a stack of blank release forms.

assistant district attorney for these guns. Morrison sold some of these guns, as well as other “evidence” guns for which he had not obtained a release form.

Corporal Dunham acknowledged that other officers had obtained weapons from the evidence room.⁸ He testified, however, that Morrison and McGehee were the only officers who had obtained guns pursuant to release orders where the evidence room records indicated that such weapons had been destroyed. He believed the guns had remained on the destruction list to conceal the number of guns that had been released to them.⁹ He also explained that Morrison and McGehee were the only officers he was aware of who had also received guns without release orders and had either maintained possession of the guns or had sold them.

Chief Phares, who initiated the internal affairs investigation of Morrison and McGehee’s conduct, also testified at the Board hearing. After the investigation was complete, he determined that Morrison’s conduct of obtaining the guns and maintaining false records violated state law and departmental policy. He stated the guns, which had been ordered destroyed, should have been disposed of in accordance with the court order. He explained that the officers were not allowed to subvert

⁸ Sergeant Stacy LeBlanc, who also worked in the evidence room, admitted receiving guns pursuant to release orders, but these guns had never been ordered to be destroyed. She also explained that if she released a gun, she would update the Department’s computer records to indicate the gun’s release.

Officer Harold Williams, who worked in the Narcotics Department, acknowledged obtaining three guns from “closed” drug cases, in which he had been involved in the initial arrests. He explained that he had gone personally to the drug court judge to get the release orders signed so he knew the signatures of the assistant district attorney and the judge on each order was legitimate. Further, the evidence does not establish the guns obtained by Williams had been ordered to be destroyed or that he had been involved in maintaining any of the evidence room records.

⁹ Captain Barbara Rushing, who was in charge of the evidence room after McGehee’s termination, also testified at the Board hearing. She explained that although the release orders should have been kept in the evidence room, her investigation revealed that in many instances, they were not.

departmental policy by acquiring “release orders” after the destruct order had been signed.

Chief Phares testified that Morrison acknowledged that records had been maintained that were “contrary to reality” and that he had been involved in maintaining the false records. Morrison also knew that some of the guns he sold were guns that had been ordered to be destroyed. Chief Phares also stated that Morrison’s subordinate position to McGehee did not relieve him of being a responsible police officer.

After reviewing the evidence in its entirety, we conclude the district court did not err in finding the Board had acted in “good faith for cause” in upholding Chief Phares’ termination of Morrison’s employment. The record demonstrates that Morrison did not perform his duties in the evidence room in a satisfactory manner and that his actions of obtaining property from the evidence room and maintaining false records were contrary to the Department’s interest and that of the public. Although the record reveals that other officers obtained property from the evidence room that might also have been classified as contrary to the interests of the Department and that of the public, the record demonstrates that Morrison’s conduct was significantly more egregious than the conduct of his fellow officers. Thus, we conclude that neither the Board nor Chief Phares acted arbitrarily or capriciously in terminating Morrison.

III. CONCLUSION

For these reasons, we affirm the district court's judgment, which affirmed the Board's decision that upheld Morrison's termination. Appeal costs are assessed against Morrison.

AFFIRMED.