

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

IN THE MATTER OF)
) C.A. No.: 00M-05-001
PFC HEATHER MASSEY,)
)

Submitted: March 22, 2002
Decided: June 20, 2002

Robert C. McDonald, Esq., Wilmington, Delaware. Attorney for Massey.

Glenn E. Hitchens, Esq., Dover, Delaware. Attorney for Camden Police Department.

Upon Consideration of Petitioner's
Writ of Mandamus
INTERLOCUTORY ORDER

VAUGHN, Resident Judge

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ORDER

Upon consideration of the plaintiff's complaint for a Writ of Mandamus and other relief, the defendant's opposition thereto, and the record of the case, it appears that:

1. The plaintiff, Heather Massey, was a Town of Camden police officer. On April 6, 2000, the Town Council dismissed her from her position for various infractions of disciplinary rules. On April 26, 2000, the plaintiff filed this action, asking the Court to issue a writ of mandamus to the Town requiring her reinstatement to the police force. She claims that her dismissal violated the Law-Enforcement Officers' Bill of Rights.¹

2. The parties have created a record, primarily through documents, which they believe is sufficient to decide whether rights given the plaintiff under the above-mentioned statute were violated, and, if so, whether such violation is sufficient to warrant relief. The facts necessary to decide this issue, which appear to be largely undisputed, are as follows.

3. In February, 2000 Chief Spielman of the Town of Camden police department notified the plaintiff that she was the subject of an investigation of several incidents of alleged insubordination, misrepresentation, failure to appear in court, and failure to respond to calls. By letter dated March 13 from the Town's attorney, the

¹ Chapter 92, Title 11 of the Delaware Code.

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plaintiff was notified that the Town Council had authorized the Chief to proceed with an administrative hearing “in accordance with the Law-Enforcement Officers’ Bill of Rights.” A hearing, or meeting, was held on March 15, attended by the Chief, the Town’s attorney, the plaintiff, and her attorney. The various charges against her were discussed. The March 15 hearing was recorded and a transcript of it was subsequently made available to the plaintiff, although the transcript was not requested or provided until much later. On April 6, the plaintiff received a letter from the Town’s attorney stating that she was being dismissed. The letter went into some detail to explain the reasons for her dismissal, including the above-mentioned incidents and previous violations of the Camden Standards of Conduct. It stated that her dismissal was effective immediately and that she must turn in all police equipment within five days. The next event was the filing of this suit. During the pendency of this action, the parties stipulated to having a hearing held before a board established by the Delaware Criminal Justice Council. That Board did hold a hearing, but on February 12, 2000 issued a decision stating that it had no jurisdiction “to hear Camden’s case for Massey’s dismissal on the merits” because the thirty days during which a hearing should be held had long passed.

4. The Law-Enforcement Officers’ Bill of Rights “provides law-enforcement officers with enhanced procedural due process safeguards.”² It applies whenever a covered law-enforcement officer “is under investigation or is subjected to questioning

² *Knox v. City of Elsmere*, 1995 Del. Super. LEXIS 216 (1995).

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for any reason which could lead to disciplinary action, demotion or dismissal.”³ The statute sets forth in twelve numbered subsections procedures which govern any such investigation or questioning.⁴ One of those subsections requires that the investigator conducting the investigation or questioning must, at the conclusion of an administrative investigation, “inform in writing the officer of the investigative findings and any recommendations for further action.”⁵ In any case where an officer is “(1) suspended for any reason, or (2) charged with conduct alleged to violate the rules or regulations or general orders of the agency that employs the officer, or (3) charged with a breach of discipline of any kind, which charge could” lead to disciplinary action, other than a reprimand, or become part of the officer’s personnel record, the officer is entitled to a hearing.⁶ This hearing must be conducted by an impartial board of officers from within the police department, or, if an impartial board cannot be convened, by a board of three officers or more convened by the Delaware Criminal Justice Council.⁷ The hearing must be held within thirty days of the conclusion of the administrative investigation, “unless waived in writing by the

³ 11 *Del. C.* § 9200(c)(1). It is undisputed that the plaintiff was a covered officer.

⁴ 11 *Del. C.* § 9200.

⁵ 11 *Del. C.* § 9200(c)(11).

⁶ 11 *Del. C.* § 9203.

⁷ 11 *Del. C.* § 9205

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charged officer.”⁸ No disciplinary action can be based upon “any evidence which is obtained in violation of the officer’s rights as contained in this chapter.”⁹

5. It is undisputed that the plaintiff did not receive a hearing before an impartial board of officers prior to her dismissal. The March 15 meeting with Chief Spielman alone certainly does not qualify as any such hearing. The Town defends itself by arguing that it did not deny the plaintiff a hearing and that at no time relevant to her dismissal did she request one. The Town’s position, however, must be rejected. The heart of the Law-Enforcement Officer’s Bill of Rights is that an officer will receive a fair hearing before an impartial board of police officers before being dismissed. At a minimum, the person or body which ultimately decides whether an officer will be dismissed or not, in this case the Town Council, must take into consideration the results of the hearing before the impartial board. The officer is not required to ask for a hearing. The employer is obligated to provide a hearing, and do so within thirty days of the conclusion of the internal investigation. The officer can waive a hearing, or waive the requirement that a hearing be held within thirty days of the conclusion of the internal investigation, but any such waiver must be in writing and signed by the officer. No such signed waiver exists in this case. This failure of the Town to conduct the plaintiff’s dismissal proceeding in compliance with the Law-Enforcement Officer’s Bill of Rights in this case is so fundamental that I conclude she

⁸ 11 *Del. C.* § 9204.

⁹ 11 *Del. C.* § 9206.

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was not lawfully dismissed. She is entitled to an appropriate remedy.

6. At this point, two years removed from the plaintiff's dismissal, I would like to hear further from the parties as to what that appropriate remedy might be. A hearing will be held to receive input from the parties on that issue. The hearing can be held on the first Friday afternoon that is convenient to the Court and the parties.

IT IS SO ORDERED.

Resident Judge

oc: Prothonotary
cc: Order Distribution