Supreme Court of Louisiana

FOR IMMEDIATE NEWS RELEASE NEWS RELEASE #041

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **20th day of October, 2020** are as follows:

PER CURIAM:

2020-CC-00491 FREDERICK N. MEINERS, III VS. ST. TAMMANY PARISH FIRE PROTECTION DISTRICT NO. 4, ET AL. (Parish of St. Tammany)

We find the district court erred in remanding the case to the Board to impose discipline other than termination. Accordingly, we reverse the judgment of the district court and reinstate the decision of the Board.
DISTRICT COURT REVERSED. DECISION OF CIVIL SERVICE BOARD REINSTATED.

Retired Judge James Boddie, Jr., appointed Justice pro tempore, sitting for the vacancy in Louisiana Supreme Court District 4.

Johnson, C.J., dissents and assigns reasons.

10/20/20

SUPREME COURT OF LOUISIANA

NO. 2020-CC-0491

FREDERICK N. MEINERS, III

VS.

ST. TAMMANY PARISH FIRE PROTECTION DISTRICT NO. 4, ET AL.

On Supervisory Writ to the 22nd Judicial District
Court, Parish of St. Tammany

PER CURIAM[*]

In this case, we are called upon to determine whether the district court's judgment reversing a decision of a civil service board goes beyond the authority granted to the district court under La. R.S. 33:2561(E). For the reasons that follow, we conclude the district court's judgment is contrary to La. R.S. 33:2561(E).

FACTS AND PROCEDURAL HISTORY

Frederick Meiners, III was employed as Assistant Fire Chief with the St. Tammany Parish Fire Protection District No. 4 ("District"). On February 19, 2016, Mr. Meiners agreed to retrieve a repaired ambulance unit from Hattiesburg, but informed his supervisor, provisional fire chief Kenneth Moore, that he first had to attend a speaking engagement with a ladies' group that would last approximately thirty minutes. At 1:08 p.m. that day, Jennifer Glorioso, the wife of Fire Equipment Operator Glorioso (hereinafter referred to as "FEO Glorioso"), photographed Mr. Meiners sitting at a table at the La Madeleine restaurant with his wife and his lawyer. She later sent a text message containing this photograph to her husband.

---

[*] Retired Judge James Boddie, Jr., appointed Justice pro tempore, sitting for the vacancy in Louisiana Supreme Court District 4.

At 2:30 p.m., District Fire Chief Brady Anderson advised Chief Moore that Mr. Meiners was not yet back from his meeting and offered to pick up the ambulance himself. Chief Moore declined Mr. Anderson's offer.

At 2:37 p.m., Chief Moore called Mr. Meiners and inquired as to his whereabouts. Mr. Meiners advised Chief Moore that he was en route back to the station. Mr. Meiners reported to Chief Moore's office at 3:00 p.m., at which time Chief Moore gave Mr. Meiners the address to the ambulance repair shop in Hattiesburg. Chief Moore also asked Mr. Meiners about his meeting with the ladies' group. Mr. Meiners told Chief Moore that "they were just asking me about my career and what we did here at Fire District 4 . . . I'm not ever going to do that again."

At 3:07 p.m., Chief Moore received a text message from an unknown number that contained a photograph of Mr. Meiners taken at the restaurant. When Mr. Meiners returned, he confronted FEO Glorioso about the photograph by standing over him and demanding that FEO Glorioso tell him who had taken the photograph.

Thereafter, on Monday, February 22, 2016, Chief Moore asked Mr. Anderson to put together a timeline of events of that day. Chief Moore then provided a written notice of investigation to Mr. Meiners, stating that he was "initiating an investigation into an incident involving you in a matter which occurred on February 19, 2016, specifically, conflicting details regarding a speaking engagement while on duty." The notice of investigation also stated the "persons conducting this investigation will be Corianne Green and a PMI representative." Chief Moore then placed Mr. Meiners on administrative leave with pay.

Ms. Green issued a written notice of interrogation to Mr. Meiners via certified mail on February 25, 2016,[1] and issued an amended notice of interrogation to Mr. Meiners dated February 29, 2016, setting an interrogation date and time of March 8,

[1] Mr. Meiners did not retrieve the notice from his mailbox until March 16, 2016.

2016 at 9:00 a.m. Mr. Meiners received the amended notice on March 1 via email from Ms. Green.

Unbeknownst to the District, Mr. Meiners conducted a "factory reset" of his employer-issued mobile phone at 11:58 p.m. on February 29, 2016. The factory reset permanently erased certain data, including all text messages.

On Tuesday, March 8, 2016, Mr. Meiners attended the interrogation with his counsel, Mr. Barnett. Ms. Green and the PMI representatives, Mark Waniewski and Shannon Darder, were also present at the meeting. At the commencement of his interrogation, Mr. Meiners was provided with a copy of the amended notice of interrogation. During the interrogation, Mr. Meiners admitted he was at a restaurant eating and attending a meeting with his wife and attorney at the time of the photograph. Mr. Meiners claimed that immediately prior to going to the restaurant, he met with a local ladies group at Pinkberry Yogurt, which is located next to the restaurant. He could not remember how long the meeting at Pinkberry lasted nor could he recall the identities of any of the persons at the meeting. Mr. Meiners's description of the meeting and involved persons was vague and general.

The date of the interrogation was also a "duty day" for Mr. Meiners. According to the District, Mr. Meiners was required to have his District-issued phone with him. Mr. Meiners did not bring the phone with him the day of the interrogation, and Mr. Barnett, his counsel, stated he had advised Mr. Meiners to leave his phone at home so its ringing would not interrupt the interrogation. Mr. Waniewski requested that Mr. Meiners retrieve his phone and bring it to Ms. Green for examination of messages, including text messages. Mr. Meiners agreed. Neither Mr. Meiners nor Mr. Barnett disclosed the February 29, 2016 factory reset or that the reset erased all text messages and other data more than a week before the interrogation.

That evening, Mr. Barnett emailed Ms. Green stating: "I would like to report that I met again with Chief Meiners this afternoon and he has checked his cellphone and that there are no phone calls or text registered on February 19." Ms. Green responded to Mr. Barnett and requested Mr. Meiners bring his cellphone to her as requested at the interrogation. On Friday, March 11, 2016, Mr. Meiners brought his cellphone to Ms. Green in a sealed envelope.

Ms. Green sent Mr. Meiners's telephone to a third-party expert, Data Recovery, to determine whether text messages from February 19, 2016 had been deleted. On April 1, 2016, Data Recovery advised Ms. Green that Mr. Meiners had conducted a factory reset on the phone on March 1, 2016.

On April 12, 2016, Ms. Green issued a written Notice of Pre-Disciplinary Hearing to Mr. Meiners, which Mr. Meiners received on or about April 13, 2016. The notice set a pre-disciplinary hearing for April 19, 2016 and listed items that could potentially form the basis of disciplinary action against Mr. Meiners. These items included Mr. Meiners's untruthfulness regarding his alleged meeting with the ladies group on February 19, 2019 and Mr. Meiners's factory reset of his District-issued cellphone.

The pre-disciplinary hearing occurred on April 19, 2016. On April 20, 2016, Chief Moore issued a Letter for Final Decision to Mr. Meiners, which terminated Mr. Meiners's employment based on his "conduct, as described in the Notice of Pre-Disciplinary Hearing."[2]

Mr. Meiners appealed his termination to the St. Tammany Parish Fire Protection District No. 4 Civil Service Board ("Board"), asserting procedural and substantive violations of his rights in the District's disciplinary action.

[2] At the time of his termination, Mr. Meiners, who had been employed with the District for 32 years, was participating in DROP and approaching retirement.

The Board affirmed the termination. The Board found that Mr. Meiners's statements under oath about the Pinkberry meeting were untruthful; Mr. Meiners improperly used his position to intimidate FEO Glorioso; and Mr. Meiners intentionally destroyed evidence that would have been unfavorable to him:

23.

> . . . .The Appointing Authority has presented evidence that, at a minimum, casts serious doubt on Meiners' claim that he was at Pink Berry meeting with a ladies group before going to La Madeleine. The question of whether Meiners was actually at Pink Berry is a matter that is peculiarly within his knowledge. Under these circumstances, the burden shifted to Meiners to prove that he was at the Pink Berry meeting. See, *Artificial Lift*. The Board closely observed Meiners' live testimony on this point and finds that it was not credible. The Board, thus, finds that Meiners' February 19, 2016 statements to Chief Moore, Meiners' statements under oath at the March 8, 2016 interrogation, and the statements under oath that Meiners made at his April 12, 2016 pre-disciplinary hearing were untruthful.

24.

> The Board also finds that: (a) Mr. Meiners improperly used his position to intimidate FEO Glorioso on February 19, 2016; and (b) Meiners intentionally, and without credible explanation, conducted a factory reset of his District 4 phone thereby intentionally destroying evidence that would have been unfavorable to him. *See Boh Bros. Const. Co. v. Luber-Finer, Inc.*, 612 So.2d 270, 274 (La. Ct. 1992), *writ denied*, 614 So.2d 1256 (La. 1993) ("Where a litigant fails to produce evidence available to him and gives no reasonable explanation, the presumption is that the evidence would have been unfavorable to his cause."). Despite these findings, the Board is mindful of Chief Moore's live testimony that he did not use these facts as a basis for disciplinary liability, but did consider them when determining the degree of Meiners' penalty.

In addition, the Board found Mr. Meiners's conduct violated La. R.S. 33:2560[3] insofar as it involved untruthfulness to a supervisor and untruthfulness during an investigation. In particular, the Board reasoned Mr. Meiners's untruthfulness "adversely affected the efficiency and operation of the department":

> Meiners was second in command at District 4. Only Chief Moore was above him in the chain of command. Meiners occupied a unique position of trust, i.e., he was in charge of the entire fire department in Chief Moore's absence. By his untruthfulness, Meiners betrayed that trust. His leadership position also required him to set a sterling example for the lesser ranks. His untruthfulness to his superior and his untruthfulness during the investigation fell far short of this mark. His misconduct struck at the heart of the structure and discipline necessary to a successful fire department. It, therefore adversely affected the efficiency and operation of the department. Meiners' termination was warranted.

---

[3] La. R.S. 33:2560 provides in pertinent part:

> A. 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.
>
> 2. The deliberate omission of any act that it was his duty to perform.
>
> 3. The commission or omission of any act to the prejudice of the departmental service or contrary to the public interest or policy.
>
> * * *
>
> 5. Conduct of a discourteous or wantonly offensive nature toward the public or toward any municipal officer or employee, and any dishonest, disgraceful or immoral conduct.
>
> * * *
>
> 14. The willful violation of any provision of this Part or of any rule, regulation or order adopted under its authority.
>
> 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 fire and police service. [emphasis added].

The Board also rejected Mr. Meiners's claims that the District violated the Fireman's Bill Of Rights ("FBOR").

Jason Kaufman, the Chairman of the Board, dissented and would have reversed the District's decision to terminate Mr. Meiners on the ground the notice of investigation "did not state the names of the PMI representatives as it should have." In addition, Mr. Kaufman would have found the District failed to bear its burden of proving Mr. Meiners was not at the Pinkberry meeting before he was photographed at La Madeleine.

Thereafter, Mr. Meiners filed a petition for judicial review and appeal from the Board's decision to the 22nd Judicial District Court. The petition sought reversal of the Board's decision; reinstatement of back pay, benefits, emoluments, interest; and attorney's fees and costs on the ground the Board's decision was without good faith and just cause.

The district court reversed and remanded. In written reasons for judgment, the district court found sufficient evidence existed to support the Board's good faith and just cause in its finding relative to the alleged procedural and due process violations. In addition, the district court found sufficient evidence existed to support the Board's good faith findings that (1) Mr. Meiners was untruthful about his Pinkberry meeting with a ladies' group and (2) Mr. Meiners improperly used his position to intimidate FEO Glorioso.

Nonetheless, the district court found no rational basis existed for the Board's finding that Mr. Meiners intentionally destroyed evidence by conducting a factory reset of his District phone. The district court also determined the finding of untruthfulness, standing alone, does not mandate termination, where the misconduct did not result in a detrimental effect on the efficient and orderly operation of the fire

department. Finally, the district court found insufficient evidence existed to establish a real and substantial relationship between Mr. Meiners's improper use of his position to intimidate FEO Glorioso and the efficient operation of the District.

The District sought supervisory review from this ruling. A five-judge panel of the court of appeal denied the writ, with two judges dissenting. *Meiners v. St. Tammany Parish Fire Protection District No. 4*, 19-1005 (La. App. 1 Cir. 3/13/20) (unpublished).

Upon the District's application, we granted certiorari to consider the correctness of the district court's judgment. *Meiners v. St. Tammany Parish Fire Protection District No. 4*, 20-00491 (La. 7/2/20), 297 So.3d 766.

DISCUSSION

In *Moore v. Ware*, 01-3341, p. 7-8 (La. 2/25/03), 839 So.2d 940, 945–46, we discussed the standards of judicial review applicable to decisions of civil service boards:

> **If made in good faith and statutory cause, a decision of the civil service board cannot be disturbed on judicial review.** *Smith v. Municipal Fire & Police Civil Service Bd.*, 94-625 (La.App. 3 Cir. 11/02/94), 649 So.2d 566; *McDonald v. City of Shreveport*, 655 So.2d 588 (La.App. 2 Cir.1995). Good faith does not occur if the appointing authority acted arbitrarily or capriciously, or as the result of prejudice or political expediency. *Martin v. City of St. Marieville*, 321 So.2d 532 (La.App. 3 Cir.1975), *writ denied*, 325 So.2d 273 (La.1976). Arbitrary or capricious means the lack of a rational basis for the action taken. *Shields v. City of Shreveport*, 579 So.2d 961, 964 (La.1991); *Bucknell v. United States*, 422 F.2d 1055 (5 Cir.1970). **The district court should accord deference to a civil service board's factual conclusions and must not overturn them unless they are manifestly erroneous**. *Shields v. City of Shreveport*, 565 So.2d 473, 480 (La.App. 2 Cir.), *aff'd*, 579 So.2d 961 (La.1991). Likewise, the intermediate appellate court and our review of a civil service board's findings of fact are limited. *Shields*, 579

> So.2d at 964. Those findings are entitled to the same weight as findings of fact made by a trial court and are not to be overturned in the absence of manifest error. *Id.*; *City of Kenner v. Wool*, 433 So.2d 785, 788 (La.App. 5 Cir.1983). [emphasis added].

In the instant case, the Board made three primary factual findings regarding Mr. Meiners's actions, which may be broadly summarized as follows:

> (1) Mr. Meiners's statements under oath regarding his purported appearance at the Pinkberry lunch were untruthful.
>
> (2) Mr. Meiners improperly used his position to intimidate FEO Glorioso on February 19, 2016.
>
> (3) Mr. Meiners intentionally, and without credible explanation, conducted a factory reset of his District issued phone thereby intentionally destroying evidence that would have been unfavorable to him.

Notably, the district court found "sufficient evidence" existed to support the Board's good faith findings that (1) Mr. Meiners was untruthful about his Pinkberry meeting with a ladies' group, and (2) Mr. Meiners improperly used his position to intimidate FEO Glorioso. However, the court determined there was insufficient evidence to support the Board's good faith in its finding that Mr. Meiners intentionally destroyed evidence that was unfavorable to him. In reaching this conclusion, the court explained the reset of the phone occurred eight days prior to the date of interrogation.

The district court went on to determine the finding of untruthfulness concerning the Pinkberry incident did not mandate termination, "where the misconduct did not result in a detrimental effect on the efficient and orderly operation of the fire department." The court pointed out there was no evidence that Mr. Meiners left the boundaries of the District during the disputed period, and there was no evidence he missed any calls during the entire time. The court noted there is no

policy prohibiting Mr. Meiners from having lunch with his wife or his attorney while on duty. Further, the court found insufficient evidence existed to establish a real and substantial relationship between Mr. Meiners's improper use of his position to intimidate FEO Glorioso and the efficient operation of the District.

Thus, although the district court found sufficient evidence to support two of the Board's three findings, it determined termination was "excessive and not commensurate with the misconduct found." As a result, the court concluded "the Board's decision to affirm the District's termination was arbitrary and capricious and without just cause."

The District contends this court rejected similar reasoning in *Marchiafava v. Baton Rouge Fire & Police Civil Serv. Bd.*, 233 La. 17, 96 So.2d 26 (1957). In that case, the Baton Rouge Police Department terminated an officer for engaging in prohibited political activity. The civil service board affirmed the dismissal on a finding that there had been a participation in political activities as charged. The officer filed a petition for judicial review. The district court stated, "I agree that appellant was guilty of political activity, but I do not agree that what he did was just cause for his dismissal from the service." Therefore, the district court reversed the termination, restored the officer to duty, and remanded the case to the civil service board for other disciplinary action such as a suspension. This court granted writs and reversed, explaining:

> But even assuming that the charge against plaintiff might be considered in the light of the above quoted general provisions of paragraph 30 (which authorize either dismissal or suspension of the employee) **unquestionably the district court was without authority to substitute, as it did, its judgment for that of the Board (changing the punishment meted out from dismissal to suspension)**. Paragraph 31 of the Civil Service Law provides: 'Any Employee under classified service and any appointing authority may appeal from any decision of the board, or

> from any action taken by the board under the provisions of the Section which is prejudicial to the employee or appointing authority. * * * **This hearing shall be confined to the determination of whether the decision made by the board was made in good faith for cause under the provisions of this Section**. No appeal to the court shall be taken except upon these grounds.'
>
> **In this instance the Board had the right to affirm the governing authority's dismissal of plaintiff; and clearly, in so ruling, it acted 'in good faith for cause' (just as the district judge found). Whether such cause was sufficient to justify the dismissal was a question determinable by the Board—not, according to the provisions of paragraph 31, by the court.**
>
> Since we have concluded that the district court exceeded its authority in setting aside the dismissal ruling of the Board a consideration of the latter's exception to the jurisdiction ratione materiae is unnecessary. [emphasis added].

Marchiafava, 233 La. at 24-25, 96 So.2d at 28-29.

The provisions of Paragraph 31, as cited by *Marchiafava*, are largely identical to the current version of La. R.S. 33:2561(E), which governs the authority granted to the district court, as reviewing court of the Board's decision. That statute provides:

> E. Any employee under classified service and any appointing authority may appeal from any decision of the board or from any action taken by the board under the provisions of this Part which is prejudicial to the employee or appointing authority. This appeal shall lie direct to the court of original and unlimited jurisdiction in civil suits of the parish wherein the board is domiciled. This appeal shall be taken by serving the board, within thirty days after entry of its decision, a written notice of appeal stating the grounds thereof and demanding that a certified transcript of the record or written findings of fact and all papers on file in the office of the board affecting or relating to such decisions be filed with the designated court. The board shall, within ten days after the filing of the notice of appeal, make, certify, and file the complete transcript with the designated court, and that court thereupon shall proceed to hear and determine the appeal in a summary manner. **This hearing shall be confined to the determination of whether the decision made by the board was made in good faith for cause under the provisions of this Part** or to whether a board member

> should have or failed to recuse himself in accordance with Subsection D of this Section. **No appeal to the court shall be taken except upon these grounds.** [emphasis added].

Mr. Meiners seeks to distinguish *Marchiafava* on the ground the district court in the instant case, unlike the court in *Marchiafava*, did not impose a different sanction in place of the Board's sanction. We acknowledge the district court did not specifically impose a new sanction; rather, the district court's judgment simply states "remanded to the St. Tammany Parish Fire Protection District No. 4 Civil Service Board for further proceedings in accordance with this Judgment and the written reasons issued by the Court on November 14, 2018." Nonetheless, the clear implication of the court's judgment is that termination is excessive, and the Board must therefore revise its decision to impose a lesser sanction. Thus, although the district court did not explicitly dictate the sanction, it defined the parameters of the sanction as being something other than termination. This action clearly goes beyond the authority granted to the district court under La. R.S. 33:2561(E).

This conclusion is further supported by *City of Bossier City v. Vernon*, 12-0078 (La. 10/16/12), 100 So.3d 301, in which the court addressed the power of a civil service board to impose a different penalty from the appointing authority. Relying on our opinion in *Marchiafava*, we stated:

> This court held the district court exceeded its authority, finding the Board, and not a reviewing court, had the authority under Art. 14, Section 15.1(31) to decide not only that discipline was warranted, but also that the discipline was commensurate with the violation. *Marchiafava*, 233 La. at 25, 96 So.2d at 29 (" . . . the Board had the right to affirm the governing authority's dismissal of plaintiff; and clearly, in so ruling, it acted 'in good faith for cause' (just as the district judge found). Whether such cause was sufficient to justify the dismissal was a **question determinable by the Board**—not, according to the provisions of paragraph 31, by the court."). Thus, we have previously held, in reviewing an earlier, substantially similar version of the statute, that the Board has the

> authority to review, and modify if appropriate, the discipline imposed by the appointing authority, even when the appointing authority imposed discipline in good faith with cause. [emphasis added].

Vernon, 12-0078 at p. 9-10; 100 So.3d at 307–08.

Vernon makes it clear that while the Board has authority to modify the discipline, the district court does not. Any attempt by the district court to usurp the Board's discretion and dictate the discipline to be imposed through the guise of a remand would frustrate the legislative intent behind La. R.S. 33:2561(E) and eviscerate our holding in *Marchiafava*.

Moreover, the district court's finding that Mr. Meiners's actions did not interfere in any significant way with his job performance is irrelevant to the issue on review. La. R.S. 33:2561(E) makes it clear the district court's determination "shall be confined to the determination of whether the decision made by the board was made in good faith for cause under the provisions of this Part." In reasons for judgment, the district court clearly explained there was "sufficient evidence to support the Board's good faith" in finding the Pinkberry violation and the intimidation violation. Having found the Board acted in good faith, the district court was not entitled to weigh the relative merits of these violations in order to determine an appropriate sanction.[4]

In summary, we find the district court's action remanding this case to the Board to impose discipline other than termination violates the clear provisions of La. R.S. 33:2561(E). Accordingly, that judgment must be reversed.

---

[4] We acknowledge the district court found the Board did not have a "rational basis" for finding Mr. Meiners intentionally reset his phone to destroy evidence. However, the allegations that Mr. Meiners reset his phone was simply part of the overall charge that Mr. Meiners was untruthful in connection with the Pinkberry incident. The district court determined the Board acted in good faith in finding Mr. Meiners was untruthful in this regard. Therefore, the district court obviously concluded the Board's finding of untruthfulness in the Pinkberry incident was supported by other facts and did not rest solely on the allegation that he reset his phone.

DECREE

For the reasons assigned, we find the district court erred in remanding the case to the Board to impose discipline other than termination. Accordingly, we reverse the judgment of the district court and reinstate the decision of the Board.

10/20/20

SUPREME COURT OF LOUISIANA

No. 2020-CC-00491

FREDERICK N. MEINERS, III

VS.

ST. TAMMANY PARISH FIRE PROTECTION DISTRICT NO. 4, ET AL.

ON SUPERVISORY WRIT TO THE 22ND JUDICIAL DISTRICT COURT, PARISH OF ST. TAMMANY

JOHNSON, C.J., dissents and assigns reasons.

Based on the facts of this case, I find the district court correctly reversed the decision of the civil service board terminating Chief Meiners.

While the court should not modify the Board's order unless it is arbitrary capricious, or characterized by abuse of discretion, appellate review of civil service disciplinary cases is multifaceted. In part, the court must evaluate the Board's imposition of a particular disciplinary action to determine if it is both based on legal cause ***and is commensurate with the infraction***. *See Walters v. Dep't of Police of City of New Orleans*, 454 So. 2d 106, 113 (La. 1984). Because I find the discipline imposed was not commensurate with the infractions committed, I respectfully dissent.

Even accepting there was sufficient evident to support the Board's findings relative to Chief Meiner's actions, termination was clearly disproportionate to any infractions committed by Chief Meiner. Chief Meiner, a 32-year veteran of the fire department who was nearing retirement, was essentially fired for not being forthright regarding having lunch during a work day with his wife and attorney. These actions, even if they involved untruthfulness, should not mandate termination. This is especially true here, where there is no evidence the misconduct had a detrimental effect on the efficient and orderly operation of the fire department. There was no

evidence Chief Meiners left the boundaries of the District during the relevant time period; the evidence established he had his radio with him and operational at all times and did not miss any calls; and Chief Meiners complied with Chief Moore's order to pick up the repaired ambulance timely. Moreover, there is apparently no policy which prohibited Chief Meiners from going to lunch within the district while on duty; there is no specific time limit within which one is to take a lunch break; and there is no prohibition for an employee to have lunch with a spouse or attorney.

Given these facts, it is my opinion the punishment imposed by the Board (i.e., termination) was not commensurate with the infractions proven. Accordingly, I would affirm the ruling of the district court.