

IN THE UTAH COURT OF APPEALS

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David P. Greer,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Petitioner,)		
)	Case No. 20060446-CA	
v.)		
)	F I L E D	
Salt Lake City Civil Service)	(September 7, 2007)	
Commission and Salt Lake City)		
Corporation,)	<table border="1"><tr><td>2007 UT App 293</td></tr></table>	2007 UT App 293
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Respondents.)		

Original Proceeding in this Court

Attorneys: Troy L. Booher and Todd M. Shaughnessy, Salt Lake City, for Petitioner
Lyn L. Creswell and Ralph E. Chamness, Salt Lake City, for Respondents

Before Judges Bench, Billings, and Davis.

BILLINGS, Judge:

Petitioner David P. Greer appeals from the Salt Lake City Civil Service Commission's (the Commission) ruling, which upheld Salt Lake City Police Chief Rick Dinse's decision to terminate Petitioner's twenty-four-year career with the Salt Lake City Police Department (the Department), following three incidents that occurred in 2003. Petitioner argues that his termination was unsupported, that termination was a disproportionate sanction for the incidents, and that it was an abuse of discretion for the Commission to uphold his termination. We affirm.

While Petitioner maintains that the Commission's ruling was an abuse of discretion, he does not challenge its factual findings. Instead, he argues that the Commission's findings do not support his termination and that his termination was disproportionate. Essentially, in order for Petitioner to be successful on appeal, he must show either of the following: (1) that the facts do not support the charges made by the Department head or (2) that the charges do not warrant the sanction imposed. See Kelly v. Salt Lake City Civil Serv. Comm'n, 2000 UT App 235, ¶16, 8 P.3d 1048. We review the decision of the Commission

to determine "if the commission has abused its discretion or exceeded its authority." Utah Code Ann. § 10-3-1012.5 (2003). This court accords the Commission "some, but not total deference," Lunnen v. Utah Dep't of Transp., 886 P.2d 70, 72 (Utah Ct. App. 1994), and we will uphold the Commission's decision unless it "'exceeds the bounds of reasonableness and rationality,'" McKesson Corp. v. Labor Comm'n, 2002 UT App 10, ¶11, 41 P.3d 468 (quoting AE Clevite, Inc. v. Labor Comm'n, 2000 UT App 35, ¶7, 996 P.2d 1072).

First, it is clear that the facts in this case support the charges made by Chief Dinse. The first incident occurred when Petitioner engaged in an "angry interchange" with a supervisor following "unprofessional" radio communications that gave a police dispatcher the reasonable belief that Petitioner had refused to respond to two separate calls, even though he did respond to the latter call. Based on these facts, the Commission found that Petitioner had violated the Department's policy requiring employees to support co-workers and act courteously.

The second incident occurred when Petitioner engaged in an angry verbal exchange with another officer. Petitioner apparently grasped the officer's arm during a confrontation over the officer's failure to call out his response to a burglary over the dispatch radio¹ and Petitioner "backed off" only after being ordered to do so by his superior three times. The Commission found that Petitioner's conduct violated the Department's policy against violence in the workplace and its policy requiring employees to support co-workers.

The third and final incident occurred after Petitioner responded to a complaint of a loud party, where he justifiably used pepper spray on two suspects. He was then approached by the suspects' son, who acted aggressively and made comments that gave Petitioner a "legitimate impression that he or his family was in danger." Petitioner responded by making "aggressive gestures" and becoming "extremely agitated, belligerent, and threatening" toward the suspects' son. This behavior gave other witnesses the impression that Petitioner was "touching, poking, or pushing" the suspects' son and was "likely to immediately engage in physical violence." The son and Petitioner had to be physically separated, and Petitioner refused to leave the scene until

1. Although the other officer's failure to call out his response was also a violation of the Department's policy, the Commission appropriately found that the conduct of the other officer did not excuse the conduct of Petitioner, who could have resolved the matter in a more professional manner.

ordered to do so three or four times by his superior.² Based on these facts, the Commission found that Petitioner had violated the Department's policies regarding insubordination, professional conduct with the public, violence in the workplace, and support of co-workers.

We conclude that in each of these instances it was not unreasonable for the Commission to decide that the facts supported Chief Dinse's charges. Moreover, we conclude that the Commission did not abuse its discretion in finding that Petitioner violated the Department's policies.

Next, Petitioner argues that the charges do not warrant the sanction of termination. In order for a sanction to be warranted, it must be both proportionate to the charges, and consistent with prior discipline. See Kelly v. Salt Lake City Civil Serv. Comm'n, 2000 UT App 235, ¶21, 8 P.3d 1048; Lucas v. Murray City Civil Serv. Comm'n, 949 P.2d 746, 761 (Utah Ct. App. 1997).

The proportionality of a sanction is based on the following factors, as set forth in Ogden City Corp. v. Harmon, 2005 UT App 274, 116 P.3d 973:

- (a) whether the violation is directly related to the employee's official duties and significantly impedes his . . . ability to carry out those duties;
- (b) whether the offense was of a type that adversely affects the public confidence in the [D]epartment;
- (c) whether the offense undermines the morale and effectiveness of the [D]epartment; or
- (d) whether the offense was committed willfully or knowingly, rather than negligently or inadvertently.

Id. at ¶18. The Commission's findings show that the Harmon factors were satisfied. First, each of the incidents giving rise to Petitioner's termination occurred while he was on duty and related directly to the performance of his official duties. Second, Petitioner's threats to a member of the public and refusal to "back down" reasonably could have adversely affected

2. Petitioner maintains that his refusal to leave the scene was based on an intent to complete his duties as the initial responding officer in the case. However, the Commission found that he did not convey those concerns to his superior, but rather stated that he was "not done with this guy, he has to know he can't threaten me."

the public's confidence in the Department. Third, Petitioner's radio communications that led a dispatcher to reasonably believe that he had refused to respond to a call, combined with his later insubordination and angry exchanges with both co-workers and supervisors, reasonably could have made the Department less effective. Fourth, Petitioner's angry and emotional reaction in each of the three incidents, and his repeated refusal to obey his supervisor's direct orders to control his outbursts, indicate willful and knowing conduct. Based on these factors, we conclude that it was neither unreasonable nor an abuse of discretion for the Commission to determine that termination was a proportional sanction for Petitioner's violations of policies governing violence in the workplace, supporting co-workers, insubordination, and professional conduct with the public.

Taken separately, the three individual incidents leading to Petitioner's termination might not be proportional to the sanction of termination. However, when viewed in light of the larger context--where Petitioner violated the Department's policies of increasing seriousness in only a few months' time--it was within the discretion of the Commission to find that termination was a proportional sanction. See, e.g., Lucas, 949 P.2d at 761. Further, because Chief Dinse "must have the ability to manage and direct his officers, and is in the best position to know whether their actions merit discipline," the choice of what discipline should be imposed is "within the sound discretion of the Chief." Kelly, 2000 UT App 235 at ¶22. This is particularly true here, where Petitioner's actions caused Chief Dinse to "los[e] confidence in [Petitioner's] ability to conduct himself properly in serving the public."

Finally, on the issue of the consistency of sanctions, Petitioner's claim fails because he did not establish a prima facie case that the sanction was inconsistent with other sanctions that the Department has imposed. See id. at ¶27 ("[T]he Commission must consider the consistency of [Petitioner's] treatment, but only after a prima facie showing by [Petitioner] that the Chief's actions . . . were contrary to his prior practice." (emphasis added)). Additionally, to be inconsistent, the prior lesser sanctions must have been "for similar or more egregious conduct." Id.

Petitioner refers to only one instance where the Department used suspension rather than termination as a sanction. In that instance, a police sergeant was suspended for failing to supervise officers at a major crime scene investigation, attempting to "influence a subordinate's Internal Affairs testimony in a case where the sergeant's actions were the subject of the investigation," and insubordination. The Commission distinguished that case from Petitioner's case, based on the

critical context of Petitioner's violations. Because Petitioner's conduct amounted to insubordination and included prompting a dispatcher to reasonably believe that he was refusing to respond to a call, making unwarranted physical threats toward the public, and physically threatening a fellow officer, it was within the Commission's discretion to distinguish between the two instances. Further, the Commission's record shows that termination was not inconsistent with previous sanctions imposed by Chief Dinse, and the Commission identified three cases where the sanction of termination was applied.³

Therefore, because Petitioner cannot show that (1) the facts of his case do not support the charges made by the Department head or (2) that the charges do not warrant the sanction imposed, see Kelly v. Salt Lake City Civil Serv. Comm'n, 2000 UT App 235, ¶16, 8 P.3d 1048, we affirm the Commission's ruling upholding Petitioner's termination.

Judith M. Billings, Judge

WE CONCUR:

Russell W. Bench,
Presiding Judge

James Z. Davis, Judge

3. Petitioner maintains that the Commission's reliance on the resignation cases was misplaced. It is true that some of those cases may not have been appropriate for purposes of comparison with this case, but some of them--including one case where the officer was "on the brink" of termination when he resigned--deserved to have "passing consideration" in the Commission's decision. However, we do not address this issue because Petitioner failed to establish a prima facie case of inconsistency.