

IN THE UTAH COURT OF APPEALS

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Salt Lake City Corporation,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Petitioner,)		
)	Case No. 20040515-CA	
v.)		
)		
Salt Lake City Civil Service)	F I L E D	
Commission,)	(September 22, 2005)	
)		
Respondent.)	<table border="1"><tr><td>2005 UT App 397</td></tr></table>	2005 UT App 397
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Original Proceeding in this Court

Attorneys: Martha S. Stonebrook, Salt Lake City, for Petitioner
Todd M. Shaughnessy and Tawni J. Sherman, Salt Lake
City, for Respondent

Before Judges Davis, Orme, and Thorne.

ORME, Judge:

We have determined that "[t]he facts and legal arguments are adequately presented in the briefs and record[,] and the decisional process would not be significantly aided by oral argument." Utah R. App. P. 29(a)(3). Moreover, the issues presented are readily resolved under applicable law.

The Commission's review of the sanction imposed on Officer Measels implicates two inquiries: "(1) do the facts support the charges made by the department head, and, if so, (2) do the charges warrant the sanction imposed?" In re Discharge of Jones, 720 P.2d 1356, 1361 (Utah 1986). "If the Commission answers no to either question, it must reverse the action taken administratively." Kelly v. Salt Lake City Civil Serv. Comm'n, 2000 UT App 235, ¶16, 8 P.3d 1048. This court, in turn, "review[s] the final decision of the Commission only 'for the purpose of determining if the Commission has abused its discretion or exceeded its authority.'" Id. at ¶15 (citation omitted).

As both parties agree that the Commission properly determined that there was a factual basis for the charges, the only issue on appeal is whether the Commission abused its discretion as to the second question. The second question involves two inquiries. Under applicable law, "the Commission must affirm the sanction if it is (1) appropriate to the offense [often referred to as the "proportionality" requirement] and (2) consistent with previous sanctions imposed by the department." Ogden City Corp. v. Harmon, 2005 UT App 274, ¶16, 116 P.3d 973. In its conclusions of law, the Commission determined the disciplinary action was "clearly disproportionate." Nevertheless, the question remains whether the Commission followed the applicable law in making that determination.

As explained in Harmon, "[i]n weighing the punishment against the offense, the Commission must give deference to the chief's choice of punishment because, as the head of the [Police] Department, he is in a position to balance the competing concerns in pursuing a particular disciplinary action." Id. at ¶17. Further, the sanction--in this case a suspension--clearly must be considered "in light of all the circumstances underlying" the suspension. Kelly, 2000 UT App 235 at ¶24. Previous violations are a critical factor in the proportionality determination and there is no requirement that previous violations be somehow related or similar to the current misconduct.¹ See id. at ¶26.

The City argues that there were three sustained prior violations in Officer Measels's history which should have been considered in the context of proportionality. It appears from its findings that the Commission considered only one of those three, a violation for "Inconsiderate Contacts," in reaching its decision. Consequently, the Commission erred by considering some but not all of Officer Measels's prior disciplinary history when making the determination that the sanction was not proportional to the charges. Accordingly, as was ordered in Harmon, we remand

¹While the controversy here concerns whether the Commission considered all of the disciplinary history of Officer Measels, the Commission must also consider positive aspects of his employment history, i.e., the six commendations and two positive evaluations in his file. See Kelly v. Salt Lake City Civil Serv. Comm'n, 2000 UT App 235, ¶21, 8 P.3d 1048.

to the Commission for further proceedings consistent with this decision.²

Gregory K. Orme, Judge

WE CONCUR:

James Z. Davis, Judge

William A. Thorne Jr., Judge

²If, on remand, the Commission determines that the sanction was proportional to the charge, it may then proceed to reconsider whether the sanction was "consistent with previous sanctions imposed by the department," Ogden City Corp. v. Harmon, 2005 UT App 274, ¶16, 116 P.3d 973, a secondary consideration in evaluating whether "the charges warrant the sanction imposed." In re Discharge of Jones, 720 P.2d 1356, 1361 (Utah 1986). See Kelly, 2000 UT App 235 at ¶21.