

STATE OF NEW JERSEY

PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Arbitration

between

the TOWNSHIP OF FRANKLIN

and

the PBA LOCAL 188

DECISION AND AWARD

RE: Docket No. AR 2008-040

*(Officer Hatem [Tim] Wahba,
Discipline)*

Before: John P. Miraglia, Arbitrator

for the Township of Franklin:
William Caldwell, Esq.
Carter, Van Rensselaer & Caldwell

for the PBA Local 188:
Michael A. Bukovsky, Esq.
Loccke, Correia, Schlager, Linsky & Bukovsky

PARTIES AND ISSUE

The Township of Franklin (Township) and the PBA Local 188 (PBA) are parties to a collective bargaining agreement.

Consistent with the terms of the agreement, and pursuant to the rules and regulations of the New Jersey Public Employment Relations Commission, the undersigned arbitrator was duly appointed to serve in this matter.

An evidentiary hearing was held on May 1, 2008. Both parties were afforded an opportunity to argue orally, present documentary evidence, present witnesses to examine and cross-examine, and file letter briefs.

The parties mutually agreed to frame the issue for determination as follows:

Was the discipline taken against Officer Wahba for just cause?

If not, what shall be the remedy?

POSITIONS OF THE PARTIES

PBA

The PBA contends that “just cause” requires certain reasonable elements before discipline can be given. The employer’s conduct must be reasonable, and their position is the Township’s conduct was not reasonable. They maintain the Township was investigating one incident and expanded the inquiry without proper notice to the grievant. It was only when they finished the investigation that the officer was appraised of the expanded violations they examined. He was given a hearing and denied the allegations. The evidence was not substantiated by documentation.

When the PBA requested information, they were denied access to it by the Township and continuously stonewalled. The PBA believes Officer Wahba was discriminated against on trumped-up charges. The PBA requests the discipline be negated and Officer Wahba be cleared of all violations. Based on the above, Officer Wahba was not disciplined for just cause.

TOWNSHIP

The Township maintains it would rely on the testimony and documented evidence to prove Officer Wahba was disciplined for just cause, and the grievance should be dismissed.

ANALYSIS

The Franklin Township Police Department is comprised of six police officers, one of whom is designated the supervisor (Officer in Charge), and a civilian Director of Public Safety.

Kenneth J. Mandoli is the Director of Public Safety. Director Mandoli testified he is in his fourth year as director for the Township. His other duties include executive administrator, OEM coordinator for Emergency Management and the Rescue Squad.

Director Mandoli testified as to his past 22 years experience in various law enforcement positions, including Internal Affairs. He stated the Officer in charge in 2004 was Officer Tim Wahba, and in 2006 Officer Dominick Zeveney was put in charge. The change was made because the Township Committee wanted to make promotions down the line, and allow different senior officers, for one year each, to have the experience.

Director Mandoli testified that Officer Zeveney had been in charge for all of 2006 and 2007. The director said he wanted to make promotions, but the Township Committee was not ready to do that and wanted Officer Zeveney, as senior officer, to remain in the Officer in Mandoli Charge position. Officer Zeveney was appointed in January 2006; supervisors receive a stipend. testified he, as director, can only make recommendations with the approval of the Township Committee for hiring and discipline. He doesn't run the day-to-day operations of the department, the officer-in-charge does..

In 2007, Director Mandoli recommended discipline for Officer Wahba. The internal investigation into his conduct began with a memo from Director Mandoli to Officer Zeveney, as the Officer in Charge, (dated May 1, 2007). This memo is listed as exhibit PBA-1, RE: Internal Affairs Investigation / Wahba. The memo stated the following:

Following a Township Committee meeting, I was directed by the committee to look into why Officer Timothy Wahba has not written any motor vehicle summonses the past two months.

According to the Franklin Township Police Department Hour Logs, for the months of February and March, Officer Wahba gave fifty (50) motor vehicle warnings in February and thirty four (34) in March.

On April 23, 2007, I gave a written request to George Wagner, Director of Public Safety, Hunterdon County, for a print out of all of Officer Wahba's patrol activity for the month of March. Based on what was presented to me, Officer Wahba did not call out any motor vehicle stops for the month of March to justify the thirty four (34) warnings that he claims he gave out. Based on this information, you are being directed to initiate an "Internal Affairs" investigation into this matter.

Director Mandoli further testified he did not do the actual investigation concerning Officer Wahba failing to complete reports. He was aware of an incident involving a house fire, when Officer Zeveney told him Officer Wahba was the officer on the scene, and did not complete a report that was required and that Officer Zeveney has specifically told him to turn in before leaving the shift.

Director Mandoli stated that with regard to that incident of the house fire, Officer Wahba never filed a timely report and he never gave him an explanation why he had not. The matter of the report was raised when an insurance company asked for a copy of it, and one could not be found. That is when Officer Zeveney found out there was no fire report, but Director Mandoli did not know if he (Zeveney) knew about it before hand. Director Mandoli testified that the Police Department secretary compiles a monthly report of all police activity from the daily police logs, and Director Mandoli submits them to the Township Committee for their review.

On May 22, 2007 Director Mandoli issued a "Final Disposition Report for Franklin Township Police Department Internal Affairs". It cited January 12, 2007; March 20, 2007; and April 22, 2007 as dates of violations by Officer Wahba of General Order FT28-06, and also of

Rule 8, Pg. 58 of the Franklin Township Police Department Rules and Regulations. They were sustained by the Township Committee.

FTPD General Order 28-06, listed as Exhibit FT-06, is as follows:

Prepare a report for every single incident on the day it occurs, no exceptions, and no excuses will be tolerated.

FT Rules and Regulations Internal Affairs:

8. Rule 8: Failure to comply with the Chief's orders, directives, regulations, etc., oral and written, and also those of superiors and supervisors. Disciplinary action of 1st offense – reprimand to dismissal; 2nd offense – dismissal.

Violation 1: General Order FT28-06 and in violation of Rule 8, Page 68, of the Franklin Township Police Department Rules and Regulations.

Violation 2: Rule 8 of the Franklin Township Police Departments Rules and Regulations.

X Sustained

The following is an excerpt of the text concerning the investigation, listed as PBA-2:

Penalty/Recommendation: On May 2, 2007, you were made aware by Officer Dominick Zeveney, Officer in Charge, that you were the subject of an internal affairs investigation for violations of the Franklin Township Rules and Regulations, as well as general order in violation of policy and procedures.

As a result of the investigation, the following conclusion was determined:

1. On thirteen different dates you failed to complete twenty-one written reports dating from January 12, 2007 to March 30, 2007, which is in violation of General Order FT 28-06 and in violation of Rule 8, Page 68, of the Franklin Township Police Department Rules and Regulations which states "failure to comply with the Chief's orders, directives, regulations, etc., oral or written and also those of superiors and supervisors".

2. You failed to obey a direct order on April 22, 2007, at 7:45 PM, when you were directed by the officer-in-charge, Dominick, Zeveney to "Sketch out a minimum report" prior to going home, regarding a structure fire that you had responded to at 175 White Bridge Road. This was not done . . . a violation of Rule 8 of the department's rules and regulations which states, "Failure to comply with the Chief's orders, directives, regulations, etc., oral or written, and also those of superiors and supervisors".

Disobeying a direct order by a superior officer could be grounds, by itself, for termination as recently witnessed by another department in our County. In addition, not doing reports when you should have, could be construed as "neglect of duty". Failing to, or deciding not to, call out motor vehicle stops is totally unacceptable patrol safety protocol, in addition to being a Hunterdon County rule violation.

As a result of the findings in this investigation, you are being given a one-day suspension without pay and being placed on a six-month probationary period.

What is disappointing to me, is the fact that you are a veteran officer who spent fifteen months as the officer in charge of this department. As a leader, you are supposed to lead by example. I think you would agree with me that your actions sent the wrong message for others to follow. Hopefully, we can put this behind us and be able to move forward.

Date of this Report: May 22, 2007

It was signed by Kenneth J. Mandoli, Director of Public Safety. The action was approved by the Township Committee, according to Director Mandoli, and according to him, he was asked by Township Committee members why he didn't give five days' suspension. He further testified he does not review the daily logs. The secretary for the Police Department issues monthly reports based on the logs and, as director, he gives the monthly reports to the Township Committee.

Dominick Zeveney has been employed by Franklin Township Police Department for 19 years. He is currently the Officer-in-Charge, a position he was appointed to in January, 2006.

On July 19, 2006 the Officer-in-Charge issued FT 28-06 (Exhibit FT-6), signed by five officers as having reviewed the order, which stated: "Prepare a report for every single incident on the day it occurs, no matter how seemingly inconsequential. There will be no exceptions, and no excuse will be tolerated." Officer-in-Charge Zeveney on May 1, 2007 was sent a memo (PBA-1) from Director Mandoli to investigate why Officer Wahba was not issuing more summonses, and Officer Wahba only reported warnings, in January, February and March of 2007. In the course of his investigation, he testified, he found unfinished reports and some reports which had never been filed concerning incidents that occurred on Officer Wahba's watch. The Internal Affairs investigation was not criminal in nature, only administrative.

Officer-in-Charge Zeveney testified Officer Wahba told him the vehicle stops he made did not require summonses. Officer Zeveney told Officer Wahba he could not find his patrol logs for February and March. Officer Wahba told him he had no knowledge of the missing logs. Officer Wahba verified he acknowledged signing General Order 28-06. Officer Zeveney told Officer Wahba he did not report on January 12, 2007 an investigation of an alarm. Officer Zeveney noted on January 27, 2007 Officer Wahba investigated a report of a suspicious person, and filed no report. There was another incident on January 27, 2007 concerning assisting a motorist, and no report was filed.

Officer Zeveney cited several other incidents where he said no reports were filed during January, February and March 2007. On April 22, 2007 Officer Zeveney stated there was a fire and an individual sustained injuries. He testified he ordered Officer Wahba to file a sketchy report until he could return to the office on his next duty day, and to file a full report when he returned to work April 25, 2007. Officer-in-Charge Zeveney stated it was a direct order which Officer Wahba never fulfilled. This incident led to the insubordination charge.

Officer-in-Charge Zeveney was questioned and further testified concerning incidents he was involved in. One occurred on Dec. 21, 2007 involving a female who allegedly was DUI and when he radioed to have her tested, she drove off in her car. Her highest speed was 65 mph, he said,

and therefore, he claimed the incident did not meet the standards of a high speed chase and he did not have to file a report with his municipality. He reported the incident on the daily log.

There was another incident concerning Officer Zeveney at the county shooting range involving a trespasser. Officer Zeveney did not file a report for this incident, but stated that he "added his report" to that of another officer who was filing a full report in this matter.

The Township decided to keep Officer Zeveney in the supervisory position. He was appointed January, 2006, and continues to date. Officer Zeveney further testified no officer has been disciplined for not following GO 28-06 before or since Officer Wahba.

Officer-in-Charge Zeveney and Director Mandoli, after the hearing on May 11, 2007 (FT-9) decided what the violations by Officer Wahba were. They recommended to the Township Committee the discipline to be imposed. It was approved by the Township.

Officer Tim Wahba has been employed for over ten years by the Township as a police officer. Prior to January, 2006 he was the officer-in-charge. According to Director Mandoli, he was removed to allow other officers to have the supervisory experience for one year each.

According to Officer Wahba, he did not make reports on certain instances because of past practice, including, for example, a false alarm when no alarm was found to be sounding; no suspicious person present when he responded, or a cow in the road if the cow wasn't there when he came on the scene.

As to the fire in April 2007, he testified he made the proper notifications to Director Mandoli and Officer Zeveney, the officer-in-charge, and that he followed up the original cursory sketch with a full written report when he returned to work during the week. He said he placed the first report in the report box. A full report could not be made at the time because it would have created an overtime situation, and that was directed and agreed to by his supervisor. Officer Wahba said the director and the Township were not happy with him because, on behalf of the other

officers and himself, he publically had opposed at a Township Committee meeting the office of the director (Mandoli) being elevated in stature. Officer Wahba testified he knew nothing of missing logs that Officer-in-Charge Zeveney said were missing. Officer-in-Charge Zeveney testified he had had two other internal investigations involving Officer Wahba, based on citizen complaints, with no negative results.

Officer Wahba testified he has had performance evaluations in the past by Director Mandoli, and they were very satisfactory. He stated his relationship with Officer Zeveney was not good. He further testified he never saw the evidence or documentation cited in his discipline. He stated he requested the information and the Township refused to let him see the information.

DECISION

The issue before this hearing is, “was the discipline taken against Officer Wahba for just cause?” The collective bargaining agreement contains the following Article IV, Management Rights:

5. Suspend, demote, discharge, or take any other appropriate disciplinary action against any employee for cause.

In Article II, Grievance Procedure:

B. Definition

1. The term “grievance” as used herein means any controversy arising over the interpretation, application, or violation of any of the provisions of this Agreement or disciplinary actions against an Employee covered under this Agreement, and may be raised by an individual, the Association on behalf of and at the request of an individual or group of individuals.
2. The following constitutes the sole and exclusive method for resolving grievances between the parties covered by this Agreement, and shall be followed in its entirety unless any step is waived by mutually written consent:

The Township began an investigation of Officer Wahba in a memo by Director of Public Safety Mandoli to Officer-in-Charge Zeveney on May 1, 2007 (PBA-1), directing an Internal Affairs investigation as to why Officer Wahba was not issuing more traffic summonses. Director Mandoli in the same directive stated on April 23, 2007 he requested information for March 2007 from the county that indicated Officer Wahba did not call out 34 vehicle warnings.

Officer Zeveney began his investigation and on May 8, 2007 sent a letter to the county requesting information on Officer Wahba for Jan. 1, 2007 through March 31, 2007 (FT-2). On May 11, 2007 (FT-9) Officer-in-Charge Zeveney conducted a hearing with Officer Wahba, his PBA attorney, and Officer Craig Santoro based on the internal investigation. In the hearing, Officer-in-Charge Zeveney alleged that Officer Wahba did not follow procedures and mainly failed to follow General Order FT 28-06 dated July 19, 2006. The order directs all incidents must be reported. Included was an incident concerning a house fire, wherein Officer-in-Charge Zeveney said Officer

Wahba had not followed a direct order by from him concerning making a report. Officer Wahba denied all the allegations.

On May 22, 2007 Director Mandoli issued a report to Officer Wahba finding him in violation of all charges and issuing discipline of one day suspension and six months probation under threat of termination. On May 25, 2007 (PBA-3), Officer Wahba filed a grievance.

During the hearing, the PBA attorney raised the issue that, after repeated requests, he was denied access to certain information that he needed to assist his defense. The Township attorney refused all the requests for documents, calling during the hearing "a fishing expedition".

The thrust of the violation centers around the failure of Officer Wahba to comply with the General Order 28-06 dated July 19, 2006. Nothing in the record of documented evidence or testimony shows any officer had their reports checked to see if they were in compliance. It wasn't until April 23, 2007 that the director requested Officer Wahba's records for March 2007 to investigate why he wasn't issuing more summonses.

In the department Rules and Regulations Policies and Procedures (FT-12) III, Procedures B.
Pg. 3:

B. Supervisor's Role

3. The primary responsibility for maintaining and reinforcing officer conformance with the standards of conduct of this department shall be with the Senior officer and the supervisors.
4. Supervisors and Senior Officers shall familiarize themselves with the officers in their unit, and closely observe their general conduct and appearance on a daily basis.
5. Supervisors and Senior Officers should remain alert for indications of behavioral problems or changes that may affect an officer's normal job performance. Such information should be documented by the supervisor and Senior Officer.

6. Where a supervisor or Senior Officer perceives that an officer may be having or causing problems, the supervisor, or Senior Officer should assess the situation, and determine the most appropriate action.
7. A supervisor, or Senior Officer may recommend additional training to refresh and reinforce an officer's skills.
8. Counseling may be used by the supervisor, or Senior Officer as follows:
 1. To determine the extent of any personal or job problems that may be affecting performance, and to offer assistance and guidance;
 2. To discuss minor and infrequent rule violations, and to discuss the substance and importance of the rules with the officer.
9. The supervisor, or Senior Officer shall document all instances of counseling or additional training used to modify an officer's behavior.

Neither Director Mandoli or Officer-in-Charge Zeveney followed their own supervisory procedures in failing to monitor overall compliance with General Order FT 28-06, dated July 19, 2006, but instead singled out Officer Wahba and never once offered guidance or counseling, or any other of the other options spelled out in their procedures. Instead, they moved immediately to discipline. They were also inconsistent in the investigation. They cited varying numbers of reports not submitted, from a high of 34 to a low of three, depending on the particular documents, the span of the investigation, and the issuance of the discipline.

The Franklin Township Police Department Rules and Regulations (FT-11), Article XI (Pg. 62), Disciplinary Actions, Departmental Discipline, reads (in part) as follows:

3. Penalties. The following penalties may be assessed against any member of the Department as a disciplinary action:
 - a. Oral reprimand.
 - b. Written reprimand.
 - c. Voluntary surrender of time off in lieu of other action.
 - d. Suspension (with or without pay).
 - e. Demotion.
 - f. Dismissal from the service.

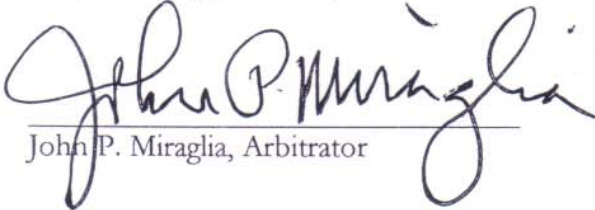
Again, their own order of penalties were not followed. As to the insubordination charge, Officer Wahba testified he filed the report in the Report Box, which apparently was not monitored or documented on a regular basis.

The manner in which the Township carried out the investigation and their fact finding were biased and tainted, in order to manufacture charges. Just cause or cause requires fairness, due process, and even-handedness in order to produce a result that is credible and unbiased. The Township said that Officer Wahba's records for January, February and March 2007 were missing, but the security and integrity of the reports are the responsibility of the Township, and not of the employees. Since no supervisor monitored the submission and safekeeping of the reports, when and how they came up missing cannot be determined.

The matter of reports, FT 28-06, were never monitored from July 19, 2006 for any officer until April 23, 2007 when the Township selectively investigated Officer Wahba using Internal Affairs, and that procedure was based on not issuing summonses, and not for failure to file reports. In light of the preponderance of testimony and documented evidence, it is concluded that Officer Wahba was not disciplined for just cause, and he is to be made whole for his suspended day, and his personnel file will be expunged of any mention of probation, or any other material pertaining to this matter.


AWARD

The grievance is upheld, and it is hereby ordered the Township make Officer Tim Wahba whole of his loss due to the one day suspension, and his personnel file and any other files will be expunged of any material pertaining to this matter, including probation, forthwith.


John P. Miraglia, Arbitrator

Dated: Leonia, New Jersey - Friday, June 27th, 2008

On this 27th day of June, 2008 before me came and appeared John P. Miraglia, to me known and known to me to be the individual described in, and who executed the foregoing instrument to me, and he acknowledged to me he executed the same.


Notary Public

SHOSHA KANJLIA
Notary Public of New Jersey
ID # 2255855
Commission Expires 6/28/2010