SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1692-15T4

IN THE MATTER OF VALERIE BRADBURY, CITY OF NEWARK POLICE DEPARTMENT.

Submitted March 14, 2017 – Decided March 27, 2017

Before Judges Fisher and Vernoia.

On appeal from the Civil Service Commission, Docket No. 2014-2045.

Fusco & Macaluso Partners, LLC, attorneys for appellant Valerie Bradbury (Shay S. Deshpande, on the brief).

Willie L. Parker, Corporation Counsel, attorney for respondent City of Newark (France Casseus, Assistant Corporation Counsel, on the brief).

Christopher S. Porrino, Attorney General, attorney for respondent Civil Service Commission (Cameryn J. Hinton, Deputy Attorney General, on the statement in lieu of brief).

PER CURIAM

Valerie Bradbury, a Newark police officer, appeals a final decision of the Civil Service Commission imposing a forty-five-day suspension without pay. We affirm in part, reverse in part,

and remand for the Commission's reconsideration of the penalty imposed.

In 2014, Officer Bradbury was served with a preliminary notice which charged her with nine violations of the Newark Police Department's rules and regulations that largely arose out of the same set of operative facts.[1] At a departmental hearing, Officer Bradbury was found guilty of all nine charges and a forty-five-day suspension without pay was imposed.

Officer Bradbury appealed, and the matter was referred to the Office of Administrative Law, which assigned an administrative law judge (ALJ) to conduct a hearing. At the conclusion of an evidentiary hearing, the ALJ found that Officer Bradbury was a twenty-two-year department member who had worked in communications and not been given an assignment "out in the field" for many years. On December 18, 2013, following thirty days of retraining, Officer Bradbury reported to the fourth precinct without a "ticket book, city ordinance, or accident book with her." And, when given an assignment by Sergeant Joao Carvalho to patrol alone, Officer

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[1] The Department charged her with violating the following regulations: (1) Chapter 3:1-2.4 (demonstration of respect); (2) Chapter 3:2.3 (responsibility for own actions); (3) Chapter 3:2.5 (lawful orders); (4) Chapter 3:2.7 (knowledge of laws and regulations); (5) Chapter 3:2.8 (assigned duties); (6) Chapter 7:2.4 (reporting for duty promptly); (7) Chapter 5:4.1 (obedience to orders); (8) Chapter 7:2.5 (reporting off duty); and (9) Chapter 17:1.16 (spelling of names).

Bradbury "loudly and aggressively objected" and claimed "she was still in retraining and should not go out alone." She also objected but eventually relented to taking the summons and ordinance books offered by Sergeant Carvalho. Later, Officer Bradbury contacted her union representative, whose intercession with superior officers led to a reassignment.

The ALJ concluded that six of the nine charges were supported by the evidence, but she found insufficient evidence to support the charges of failing to report promptly for duty (the sixth charge), of disobeying an order (the seventh charge), and of failing to report before going "off duty" (the eighth charge).[2] In light of Officer Bradbury's disciplinary history, which included a thirty-day suspension in 2007 for disobedience, insubordination and unfitness for duty, and through application of the well-established policy of progressive discipline, In re Stallworth, 208 N.J. 182, 195-97 (2011); West New York v. Bock, 38 N.J. 500, 523-24 (1962), the ALJ found — despite rejection of three of the nine charges — that the forty-five-day suspension without pay remained reasonable.

[2] The ALJ's opinion concluded with a statement that she had sustained seven of the nine charges: the first, second, third, fourth, fifth, seventh, and ninth. This was a clerical error, since the opinion's text expresses the ALJ's rejection of the seventh charge.

Officer Bradbury filed exceptions with the Civil Service Commission, which issued a final decision approving the ALJ's determination.

Officer Bradbury now appeals to this court, arguing:

> I. THE COURT SHOULD REVERSE THE CIVIL SERVICE COMMISSION'S FINAL ADMINISTRATIVE ACTION BECAUSE [THE ALJ'S] DECISION WAS MANIFESTLY MISTAKEN AND NOT SUPPORTED BY THE RECORD. THEREFORE, [THE ALJ'S] ACTIONS WERE ARBITRARY AND CAPRICIOUS.
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> > A. The Evidence Shows That Officer Bradbury Did Not Address Sgt. Carvalho In A Loud And Aggressive Tone.
> >
> > B. Officer Bradbury Was Not Shown To Be Guilty Of Failure To Take Responsibility For Her Own Actions.
> >
> > C. [The Fifth] Charge [] Was Not Sustained.
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> II. THE COURT SHOULD REVERSE THE CIVIL SERVICE COMMISSION'S FINAL ADMINISTRATIVE ACTION BECAUSE THE PENALTY IMPOSED BY THE CIVIL SERVICE COMMISSION WAS DISPROPORTIONATE IN LIGHT OF ALL THE CIRCUMSTANCES [AND EXCESSIVE AS WELL].

We discuss, first, the arguments relating to the sustaining of the charges and, thereafter, the penalty imposed.

I

Officer Bradbury challenges the Commission's determinations on only three of the six charges. Of those here challenged, we

find insufficient merit in Officer Bradbury's arguments on two of them — the first (failure to demonstrate respect, which is discussed in Officer Bradbury's Point I(A)), and the fifth (responsibility for the proper performance of an assignment, Point I(C)) — to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E).

We add only, with regard to the first charge, that the matter was hotly contested. The ALJ was presented with conflicting versions: Sergeant Carvalho testified Officer Bradbury responded to him in a loud and aggressive voice; Officer Bradbury denied that assertion; and a third officer testified that Officer Bradbury was agitated and raised her voice "a little." The Commission, in adopting the ALJ's findings, resolved that factual dispute in the department's favor. That determination, which was based largely on credibility findings, was not arbitrary, capricious or unreasonable. Karins v. City of Atlantic City, 152 N.J. 532, 540 (1998). Consequently, our limited standard of review precludes intervention. Campbell v. N.J. Racing Comm'n, 169 N.J. 579, 588 (2001); Close v. Kordulak Bros., 44 N.J. 589, 599 (1965).

And, although that part of her opinion that summarized her findings on each charge omitted a discussion of the fifth charge, the ALJ's other findings demonstrated that Officer Bradbury, who was indisputably not in possession of a summons book and other

materials when reporting for duty on the day in question, was not prepared to fulfill the assignment given until Sergeant Carvalho provided her with the necessary items. We, thus, reject Officer Bradbury's claim that the record lacked sufficient evidence to support the fifth charge.

On the other hand, we agree with Officer Bradbury's argument that there was no evidence to sustain the second charge, which was based on an alleged violation of Chapter 3:2.3. That regulation prohibits an officer from claiming "action or inaction resulted from the advice or suggestion of another person." To be sure, the ALJ found Officer Bradbury was apprehensive "about going out [into the field] by herself" after many years in communications and that it was perhaps this nervousness that generated the "commotion" of December 18, 2013. But the ALJ did not find that Officer Bradbury blamed her hesitancy on "another person," and the evidence found credible by the ALJ permits no such inference. As a result, we agree with the argument that there was insufficient evidence to support this charge, and we reverse the Commission's determination to the contrary.

In short, we reverse the sustaining of the fifth charge, but otherwise affirm the Commission's determination that the other five charges were supported by the evidence.

II

Turning to Officer Bradbury's argument regarding the penalty, we note that the department originally imposed a forty-five-day suspension upon its finding that all nine charges were established. That penalty was again imposed even though the ALJ, and the Commission thereafter, sustained only six of the nine charges. And we now conclude that one of those six was not sustained. Consequently, we deem it appropriate to remand for reconsideration of the forty-five-day suspension in light of this altered landscape. In so remanding, we do not mean to suggest the same suspension may not be imposed, only that it should be reconsidered because the foundation upon which it was originally based has been quantitatively diminished.

Affirmed in part, reversed in part, and remanded for reconsideration of the penalty imposed. We do not retain jurisdiction.