

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

SECTION 28

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BR POLICE DEPARTMENT .

V. . SUIT NO. 579,821

CHARLES O'MALLEY .

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THURSDAY, DECEMBER 17, 2009

RULING

THE HONORABLE TRUDY M. WHITE, JUDGE PRESIDING

APPEARANCES:

JOSEPH LOTWICK

CHARLES DIRKS

FOR:

PLAINTIFF

DEFENDANT

REPORTED BY: KIMBERLY W. FORD, CCR #96020

**THURSDAY, DECEMBER 17, 2009**

**THE COURT:** GOOD AFTERNOON. THIS IS THE CIVIL SIDE THIS AFTERNOON. SO WE ARE COMING OUT OF RECESS FOR OUR CIVIL DOCKET THIS AFTERNOON. WE ARE HERE FOR A RULING IN THE MATTER STYLED **BATON ROUGE POLICE DEPARTMENT VS. CHARLES O'MALLEY**, NUMBER 579,821 ON THE DOCKET NINETEENTH JUDICIAL DISTRICT COURT DOCKET SECTION 28. GENTLEMEN, WOULD YOUR MAKE APPEARANCES FOR THE RECORD?

**MR. LOTWICK:** YOUR HONOR, JOE LOTWICK REPRESENTING THE BATON ROUGE POLICE DEPARTMENT.

**MR. DIRKS:** CHARLES DIRKS, AVANT AND FALCON, 429 GOVERNMENT STREET ON BEHALF OF CHARLES O'MALLEY.

**THE COURT:** ALL RIGHT. THANK YOU, GENTLEMEN. THE COURT IS READY TO RULE. THIS MATTER IS BEFORE THE COURT ON AN APPEAL BY THE BATON ROUGE POLICE DEPARTMENT FROM A DECISION RENDERED BY THE BATON ROUGE MUNICIPAL FIRE AND POLICE CIVIL SERVICE BOARD. ARGUMENTS WERE HEARD ON DECEMBER 1, 2009. THE ISSUE BEFORE THE COURT IS WHETHER THE BOARD ERRED IN MODIFYING THE APPOINTING AUTHORITY, CHIEF OF POLICE, JEFF LEDUFF'S DECISION TO TERMINATE CORPORAL CHARLES O'MALLEY. AN APPOINTING AUTHORITY MAY TERMINATE OR IMPOSE OTHER DISCIPLINE ON A CIVIL SERVICE EMPLOYEE IF HE OR SHE FINDS THE EXISTENCE OF A GROUND ENUMERATED IN REVISED STATUTE, 32:2500. PERTINENT TO THIS MATTER, THESE GROUNDS INCLUDE AN OFFICER'S UNWILLINGNESS OR FAILURE TO PERFORM THE DUTIES OF HIS POSITION IN A SATISFACTORY MANNER, THE DELIBERATE OMISSION OF ANY FACT THAT IT WAS HIS DUTY TO PERFORM, AND THE

COMMISSION OR OMISSION OF ANY ACT TO THE PREJUDICE OF THE DEPARTMENTAL SERVICE OR CONTRARY TO THE PUBLIC INTEREST OR POLICY. IT IS THE APPOINTING AUTHORITY'S BURDEN TO SHOW BY A PREPONDERANCE OF THE EVIDENCE THAT THE DISCIPLINE TAKEN WAS WARRANTED UNDER THE CIRCUMSTANCES. BY STATUTE, THIS COURT'S REVIEW IS CONFINED TO THE SOLE ISSUE OF WHETHER THE BOARD'S DECISION WAS MADE IN GOOD FAITH AND FOR CAUSE. COURTS HAVE CHARACTERIZED THIS STANDARD AS ONE THAT REQUIRES A REVIEWING COURT TO DECIDE WHETHER THE BOARD'S DECISION WAS ARBITRARY OR CAPRICIOUS. A DECISION IS ARBITRARY WHEN IT DISREGARDS EVIDENCE OR DOES NOT GIVE IT THE PROPER WEIGHT. A DECISION IS CAPRICIOUS WHEN ITS CONCLUSION HAS NO SUBSTANTIAL EVIDENCE TO SUPPORT IT, OR IS CONTRARY TO SUBSTANTIATED, COMPETENT EVIDENCE. IN REVIEWING A DECISION OF THE BOARD, THE COURT MUST GIVE DEFERENCE TO THE BOARD'S FACTUAL FINDINGS. ON OCTOBER THE 6TH OF 2009, THE COURT REMANDED THE MATTER BACK TO THE BOARD TO PROVIDE WRITTEN FINDINGS OF FACT AS REQUIRED BY REVISED STATUTE 32:2501. THIS COURT IS OF THE OPINION THAT THE BOARD'S WRITTEN REASONS FOR JUDGMENT FILED IN THE RECORD OF THIS MATTER, IN RESPONSE TO THE COURT'S ORDER REFLECTS MORE OF A SUMMATION OF THE TESTIMONY AND EVIDENCE THAT WAS PRESENTED AT THE APPEAL RATHER THAN THE BOARD'S EVALUATION OF THAT TESTIMONY AND EVIDENCE. NEVERTHELESS, THE COURT TAKES THE STATEMENT CONTAINED IN THOSE REASONS THAT THERE IS NO INDICATION THAT THE BOARD DID NOT BELIEVE THE TESTIMONY OF ANY WITNESS AS A FINDING BY THE BOARD

THAT THE TESTIMONY OF EVERY WITNESS WAS TRUTHFUL AND ACCEPTED BY THE BOARD AS FACT. TAKING THIS FINDING INTO ACCOUNT, A REVIEW OF THE RECORD REVEALS THAT THERE IS SUBSTANTIATED AND COMPETENT EVIDENCE THAT SUPPORTS THE APPOINTING AUTHORITY'S GROUNDS FOR THE TERMINATION OF CORPORAL O'MALLEY. THE CHIEF TESTIFIED THAT IT WAS A TOTALITY OF CIRCUMSTANCES THAT LED TO HIS DECISION TO TERMINATE CORPORAL O'MALLEY. CHIEF LEDUFF EXPLAINED THOSE CIRCUMSTANCES TO BE HIS FINDING THAT CORPORAL O'MALLEY DISREGARDED POLICY FOR USE OF FORCE, TRUTHFULNESS, AND REPORTING REQUIREMENTS. THE RECORD IN THIS MATTER ESTABLISHES BY A PREPONDERANCE OF THE EVIDENCE THAT THOSE CIRCUMSTANCES EXISTED. EVEN ASSUMING THAT THE BOARD FOUND FROM THE EVIDENCE THAT THERE WAS NOT A VIOLATION OF THE DEPARTMENT'S USE OF FORCE POLICY AS IT RELATED TO CORPORAL O'MALLEY'S USE OF HIS TASER GUN, THE EVIDENCE CLEARLY ESTABLISHES THAT CORPORAL O'MALLEY'S USE OF HIS FLASH LIGHT VIOLATED THE DEPARTMENT'S FORCE POLICY. THE CORPORAL READILY ADMITTED THIS FACT IN HIS OWN TESTIMONY. HIS PARTNER ON THE SCENE DID AS WELL. EVEN ASSUMING THAT THE BOARD FOUND THAT THE FORCE THE CORPORAL APPLIED ON THE SUSPECT'S NECK AND THROAT AREA WAS AS THE CORPORAL DESCRIBED, POOR TECHNIQUE RATHER THAN A CHOKE HOLD, THE CORPORAL'S OWN DESCRIPTION OF HIS MANEUVERS ESTABLISHES HIS FAILURE TO PERFORM HIS DUTIES IN A SATISFACTORY MANNER. BY CORPORAL O'MALLEY'S OWN ADMISSION, HE FAILED TO DISCLOSE THAT HIS UNIT VIDEO CAMERA WAS OPERATING AT THE

TIME OF THE INCIDENT. HE EVEN FAILED TO ENGAGE HIS MICROPHONE. IN O'MALLEY'S TERMINATION LETTER THE CHIEF STATED THAT HE CAREFULLY CONSIDERED ALL OF THE INFORMATION AVAILABLE TO HIM IN THIS MATTER. IN WEIGHING ALL OF THAT INFORMATION, IT INCLUDED CORPORAL O'MALLEY'S COMMENTS AND THOSE OF HIS ATTORNEY AT THE PRE-DISCIPLINARY HEARING. IT INCLUDED DOCUMENTS OR WITNESSES IN MITIGATION SUCH AS CORPORAL O'MALLEY'S PRIOR AWARDS FOR HIS SERVICE ON THE DEPARTMENT. NOTWITHSTANDING, CHIEF LEDUFF STILL FOUND THAT TERMINATION WAS WARRANTED, AND THE RECORD OF THIS MATTER SUPPORTS HIS FINDING. COURTS HAVE LONG RECOGNIZED THE PECULIAR NATURE OF A LAW ENFORCEMENT AGENCY. THEY OPERATE ESSENTIALLY AS A PARA-MILITARY ORGANIZATION. DISCIPLINE IS, THEREFORE, IMPERATIVE. TO PRESERVE THE HIGH POSITION OF PUBLIC TRUST THEY OCCUPY, AN APPOINTING AUTHORITY HAS A CERTAIN PREROGATIVE IN ESTABLISHING RULES AND IN IMPOSING DISCIPLINE FOR VIOLATIONS OF THOSE RULES. THAT PREROGATIVE SHOULD NOT BE DISTURBED ABSENT A SHOWING THAT IT WAS EXERCISED WITHOUT GOOD FAITH AND FOR GOOD CAUSE. JUST AS THIS COURT MAY NOT SUBSTITUTE ITS JUDGMENT FOR THE JUDGMENT OF THE BOARD, THE BOARD, LIKEWISE MAY NOT SUBSTITUTE ITS JUDGMENT FOR THAT OF THE APPOINTING AUTHORITY. A TERSE STATEMENT BY A BOARD MEMBER THAT HE BELIEVED CORPORAL O'MALLEY MESSED UP, BUT DOESN'T BELIEVE IT WAS MEAN-SPIRITED, STANDING ALONE, WITHOUT ANY FURTHER DELIBERATION BY THE BOARD, BEFORE THE VOTE WAS TAKEN, EVIDENCES THE BOARD'S DISREGARD AND IMPROPER WEIGHING OF THE EVIDENCE PRESENTED AT THE

APPEAL HEARING. THE COURT CONCLUDES THAT THE BOARD'S DECISION WAS NOT IN GOOD FAITH AND FOR CAUSE. THEIR DECISION TO MODIFY THE DISCIPLINE IMPOSED BY THE APPOINTING AUTHORITY IS, THEREFORE, REVERSED AND THE TERMINATION OF CORPORAL CHARLES O'MALLEY IS REINSTATED. THAT IS THIS COURT'S RULING. THERE BEING NOTHING FURTHER FOR THIS COURT TO DELIBERATE ON OR TO RULE ON, COURT IS NOW ADJOURNED.

C E R T I F I C A T E

I, KIMBERLY W. FORD, CCR, OFFICIAL COURT REPORTER, NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA, DO HEREBY CERTIFY THAT THE FOREGOING PAGES CONSTITUTE A TRUE AND ACCURATE TRANSCRIPT OF THE AFORESAID MATTER AS TAKEN BY ME ON THE STENOGRAPHIC MACHINE, TO THE BEST OF MY KNOWLEDGE AND ABILITY.

WITNESS MY HAND THIS 17TH DAY OF DECEMBER, 2009.

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KIMBERLY W. FORD  
OFFICIAL COURT REPORTER  
19TH JUDICIAL DISTRICT COURT  
CCR #96020