

THOMAS G. MEYER,
Plaintiff,

vs.

CASE NO. 08-CV-980

VILLAGE OF PLAIN CITIZEN POLICE
COMMITTEE AND KEVIN KRAEMER,
Defendants.

FILED

MAY 28 2009

MEMORANDUM DECISION
Under Sec. 62.13(5)(i), Wis. Stats.

Sauk Co., WI Circuit Court

Under Wisconsin Law, villages that establish their own police department are required to provide police employees specific due process rights prior to terminating their employment. §61.65, Stats. On October 15, 2008, the Village of Plain terminated its Police Chief, Thomas G. Meyer ("Chief Meyer") pursuant to an Order from the Village of Plain Citizen Police Committee dated October 14, 2008. The Committee, comprised of three Village residents, conducted a due process hearing on October 1, 2008, and heard testimony and received exhibits related to written charges filed by Kevin Kraemer, a Village resident and Village Board member. At the conclusion of that hearing, the Committee issued a written decision, concluding that Chief Meyer had knowingly violated seven directives given him by the Village and that such conduct required the termination of his employment.

Chief Meyer appealed that decision and the order for his termination pursuant to §62.13(5)(i) which requires the circuit court to determine whether upon the evidence is there just cause, as described under par. (em), to sustain the charges against the accused. The circuit court's role is not to substitute its judgment for the Committees, but rather to examine the record and verify that Chief Meyer has been afforded his statutory due process rights.

ANALYSIS

Section 62.13(4), Stats, provides that no officer may be suspended and reduced in rank, or removed based on charges filed by an aggrieved person unless the Police Committee determines that there is just cause to sustain the charges. Just cause is defined by the statutes in terms of seven standards which must be met before the discipline can be imposed. Sec. 62.13(5)(em)1.-7., Wis. Stats. Those statutory

requirements also apply to disciplinary actions against a police chief where applicable. Sec. 62.13(5)(j).

The Statement of Charges describes seven specific directives or orders that are alleged to have been ignored or not followed by Chief Meyer. Those seven directives are listed as numbers 7-13 on the Statement of Charges. *Exhibit A-4*. For purposes of this analysis those directives will be referred to as follows:

1. Directive to work eight-hour Fridays (item 7 on Exhibit A-4)(date of February 13, 2008);
2. Directive to work weekend shifts (item 8 on Exhibit A-4)(date of June 12, 2008);
3. Directive to correctly complete detailed time sheets (item 9 on Exhibit A-4)(date of June 20, 2008);
4. Directive to park squad car at wastewater treatment plant while on medical leave of absence (item 10 on Exhibit A-4)(date of June 25, 2008);
5. Directive to Chief Meyer not to maintain squad car at his residence (item 11 on Exhibit A-4)(date of July 18, 2008);
6. Directive to provide access code to the Police Department (item 12 on Exhibit A-4)(date of July 25, 2008);
7. Directive to perform all administrative record keeping at Police Department rather than at Chief Meyer's residence (item 13 on Exhibit A-4)(date of June 13, 2007).

This court gives deference to the Board's findings and credibility determinations in determining whether, upon the evidence before the Board, there was "just cause," under the criteria listed in subsection 62.13(5)(em), Wis. Stats., to sustain the charges against Chief Meyer.

1. Whether the subordinate could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct.

The Police Committee noted that Charter Ordinance No. 37 provides that the Chief of Police is appointed by a majority of the members of the Village Board. It further noted that Section 4 of Charter Ordinance No. 37 provides that the Chief shall perform duties as may be required of him from time to time by the Village Board. *Ex. 8*. The Police Committee further noted that Section 4.02(2) of the Village of Plain Ordinances provide that the Chief shall obey all lawful written orders of the President of the Board. *Ex. 25*.

Chief Meyer acknowledged that he had received the directives in question. *Tr. p. 130*. He further admitted non-compliance with those directives. *Tr. p. 131*. Finally, Chief Meyer, explained his reason for non-compliance. He testified that he didn't comply with the directives because they "were not lawful in my professional opinion". *Tr. p. 120*.

The court finds, therefore, that Chief Meyer knew that he was intentionally failing to comply with the directives in question. If the directives were lawful and reasonable, he is guilty of insubordination. It is further noted that Ex. 14, the letter from Ellenbolt to Chief Meyer, specifically informed the chief of the potential consequences of failure to comply with that order.

The court finds that, based upon the evidence before the committee, there was just cause as to satisfy this requirement of Sec. 62.13(5)(em), Wis. Stats.

2. Whether the rule or order that the subordinate allegedly violated is reasonable.

Given the facts of this case, this element of “just cause” is critical to the outcome of the case. Chief Meyer has, as previously discussed earlier in this decision, admitted to have received the directives in question and to have failed to comply with those directives. He bases his defense on the assertion that the directives were not lawful. For purposes of this analysis, the court will construe the chiefs’ position to be that, since he believes the directives were not lawful, that the directives were therefore unreasonable.

The record of the committee hearing sets forth an adequate basis for the committee to conclude that the directives in question were practical. If, however, the directives were illegal, as the chief contends, they were not “reasonable” for purposes of this analysis. It is therefore necessary to determine if the directives were “lawful” directives.

The ordinances of the Village purport to give the Village Board authority to assign duties to the Chief of Police. *Charter Ordinance No. 37, Ex. 8*. Section 4 reads as follows:

“Section 4. Such Chief of Police shall have the powers, privileges and duties of village marshals and village constables under §§61.28 and 61.29, Wis. Stats., and shall perform such other duties as may be required from time to time by the Village Board.”

Section 1.10(3) of the Villages’ ordinances defines the authority of the Village Board in broad terms as follows:

“1.10 (3) Authority. The Village Board shall have all powers of the Village not specifically given to some other body or officer. Except as otherwise provided by law, the Village Board shall have the management and control of the Village property, finances, highways, streets, utilities and the public service and may act for the government and good order of the Village, for its commercial benefit and for the health, safety, welfare and convenience of the public and may carry its powers into effect by license, regulations,

suppression, borrowing, taxation, special assessment, appropriation, imposition of forfeitures and other necessary or convenient means.”...

Ex. 24.

Section 4.02 of the Villages’ ordinances gives further guidance as to the powers and duties of the Chief of Police and as to the general authority of the president of the Village Board over the Chief of Police. It reads as follows:

4.02 CHIEF OF POLICE: DUTIES AND POWERS. (1) The Chief of Police shall possess the powers, enjoy the privileges and be subject to the liabilities conferred and imposed by law upon marshals and constables.

(2) He shall obey all lawful written orders of the President of Board.

(3) He shall cause the public peace to be preserved and see that all laws and ordinances of the Village and State are enforced; and whenever any violation thereof comes to his knowledge, he shall cause the requisite complaint to be made and see that the evidence is procured for the successful prosecution of the offender.

(4) He shall exercise supervisory control over all Department personnel and may adopt, subject to the approval of the Board, rules and regulations for the government, discipline, equipment and uniforms of police officers.

(5) He shall be solely responsible for the care and condition of the equipment used by his Department.

(6) He shall keep an accurate and complete record of all complaints, arrests, traffic violations, convictions and dispositions of the Department.

Ex. 25.

The Chief Meyer testified that he believed the directives given to him in this case were not lawful. Based upon the ordinances of the Village, it appears that the directives were authorized under said ordinances. We must, however, also review the Wisconsin Constitution and applicable state statutes to determine whether or not the directives were lawful.

First, we consider Article XI, Section 3, Subsection (1), of our state constitution. It reads as follows:

Municipal home rule; debt limit; tax to pay debt. SECTION 3. (1) Cities and villages organized pursuant to state law may determine their local affairs and government, subject only to this constitution and to such enactments of the legislature of statewide concern as with uniformity shall affect every city or every village. The method of such determination shall be prescribed by the legislature.

Our legislature has enacted laws regarding “home rule” and limitations thereon. Section 61.34, Wis. Stats. sets forth powers granted village boards. Subsection (1) reads as follows:

61.34 Powers of village board. (1) GENERAL GRANT. Except as otherwise provided by law, the village board shall have the management and control of the village property, finances, highways, streets, navigable waters, and the public service, and shall have power to act for the government and good order of the village, for its commercial benefit and for the health, safety, welfare and convenience of the public, and may carry its powers into effect by license, regulation, suppression, borrowing, taxation, special assessment, appropriation, fine, imprisonment, and other necessary or convenient means. The powers hereby conferred shall be in addition to all other grants and shall be limited only by express language [emphasis added].

Further evidence of the intent of the legislature to liberally construe the “home rule” authority of village board is set forth in subsection 61.34(5), Wis. Stats.:

(5) CONSTRUCTION OF POWERS. For the purpose of giving to villages the largest measure of self-government in accordance with the spirit of article XI, section 3, of the constitution it is hereby declared that this chapter shall be liberally construed in favor of the rights, powers and privileges of villages to promote the general welfare, peace, good order and prosperity of such villages and the inhabitants thereof.

There are several examples where the legislature has limited “home rule” authority of villages. They do so by express language, for example, in regard to village police and fire departments in Sec. 61.65, Wis. Stats., (see subsection (5)), and in Section 62.13, Wis. Stats. (see subsection (12)).

The directives in question do not fall within the category of those matters deemed to be of statewide concern by the legislature. The directives therefore represent a lawful exercise of authority over the Chief of Police. *Van Gilder v. Madison*, 222 Wis. 58, 87. This court finds that there was sufficient credible evidence before the board to justify their finding that the directives in question were reasonable.

3. The standards set forth in subsections 62.13(5)(em), 3., 4., and 5., Wis. Stats.

Under subsection 62.13(5)(j), Wis. Stats., the provisions of paragraphs (a) to (i) of Sec. 62.13(5), Wis. Stats. apply where applicable [emphasis added] to disciplinary actions against police chiefs. The plaintiff contends that subsections 62.13(5)(em)3., 4., 5., and 6. apply in this case.

Chief Meyer was represented by legal counsel during the hearing on the charges against him in this case. Chief Meyer admitted that he received the directives and that he did not follow them. President Ellenbolt testified that the seven directives in question were not complied with. There was no evidence before the board hearing the charges that Chief Meyer did not violate the rules/directives.

The record supports the conclusion and I so find that, to the extent applicable, the provisions of subsections 62.13(5)(a) through (i) were followed in this case. Specifically, the standards set forth in paragraphs 62.13(5)(em) 3. through 5. do not apply. Chief Meyer was afforded appropriate due process.

4. Whether the chief is applying the rule or order fairly and without discrimination against the subordinate.

With one possible exception, no evidence was presented to the board hearing this disciplinary action which would indicate that the Village was applying these rules unfairly or that the Village discriminated against its Police Chief. The one possible exception involves the fact that the Chief of Police was on medical leave of absence from June 19, 2008 through July 14, 2008. *Ex. 22. Ex. 23.* Therefore, the chief could not be expected to comply with any of the directives during that time interval. Since the Village President's directive of June 25, 2008 (*Ex. 17*), required Chief Meyer to park the squad car at the waste water treatment plant while Chief Meyer was on medical leave, its enforcement against Chief Meyer was unfair and cannot be sustained based on the evidence that was before the police committee. Likewise, the letter from Ellenbolt to Chief Meyer on June 20, 2008, was sent during Chief Meyer's leave of absence. Nonetheless, Chief Meyer failed to comply with these directives after returning to work on or about July 14, 2008.

5. Whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the subordinate's record of service with Police Chief Meyer's department.

Pursuant to §62.13(5)(e), Wis. Stats. the committee is authorized to impose penalties once charges have been filed if the board determines that the charges are sustained. The penalties that may be imposed by order of the board are suspension, reduction in rank, or removal, as the good of the service may require. In this case, the committee ruled that Chief Meyer's employment with the Village of Plain be terminated.

In determining the penalty to be imposed, the committee must consider the seriousness of the violations, the standard of conduct expected of a police chief. The chief's record of service with the Village Police Department is also to be considered.

Chief Meyer was hired by the Village on or about June 17, 2000. *Tr. p. 117.* There is no evidence of any disciplinary action having been taken against him prior to the present action.

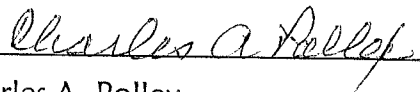
The plaintiff argues that the defendant fails to document an adequate analysis of this issue in its decision. Specifically, the plaintiff points out that there is nothing in the committee's decision to indicate that the committee considered imposing a lesser penalty, such as a reprimand or a suspension. The court agrees.

Given the facts established in the record, this court is unable to conclude that there is just cause to sustain the committee's decision to terminate Chief Meyer.

IT IS THEREFORE ORDERED, that the matter is remanded to the Village of Plain Citizen Police Committee and that said committee take further evidence or otherwise set forth its analysis leading to the conclusion that termination is reasonable in this case.

Dated this 4th day of May, 2009.

BY THE COURT:



Charles A. Pollex
Circuit Court Judge
Adams County, Wisconsin