

City of Troy

MINUTES OF MEETING POLICE/FIRE COMMISSION (ACT 78) For June 8, June 22 & July 13, 1981

- I. Call to order: 7:45 PM.
Roll call: All present.
- II. Minutes of April 1, 1981:
Motion to approve: Wangbichler Seconded: Strecker
Yes: All
- III. Petitions and communications:
A. Hearing, Robert Petty, question on timeliness. Chairman advised request is timely; hearing to commence upon adjournment of this meeting.
- IV. New business:
A. Request to correct conflict: Chairman advised Police Chief to provide recommendation to future meeting.
- V. Old business:
None (Police Chief advised to temporarily discontinue use of polygraph test.)
- VI. Reports:
None
- VII. Adjourn
Motion to adjourn: Strecker Seconded: Wangbichler
Yes: All (8:02 PM)
- Hearing: Chairman advised Petty hearing open: (8:08 PM).
Mr. Cross presented witnesses.

500 W. BIG BEAVER ROAD TROY, MICHIGAN 48084 PHONE: (AREA 313) 524-3300

Bldg. Inspections	524-3344	Dept. of Public Works ...	524-3370	Personnel/Purchasing ...	524-3339
City Assessor	524-3311	Engineering	524-3383	Planning	524-3364
City Attorney	524-3320	Finance	524-3411	Police Dept.	524-3443
City Clerk	524-3316	Fire	524-3419	Recreation (Parks)	524-3484
City Manager	524-3330	Library	524-3538	Treasurer	524-3334

(11:00 PM) Hearing recessed to 7:30 PM, June 22, 1981.

(June 22, 1981) Hearing reconvened: (7:40 PM, all Commissioners present), testimony continued.

Recessed: 9:18 PM.

Reconvened: 9:30 PM.

Testimony continued.

Recessed: 10:45 PM, to reconvene at 7:30 PM, July 13, 1981.

(July 13, 1981) Hearing reconvened: 7:40 PM, all Commissioners present).

Testimony continued.


Recessed: 9:15 PM.

Reconvened: 9:25 PM.

Testimony continued.

Testimony and closing arguments were held: Chairman announced the Commission would issue decision shortly. Commission retired to executive session at 11:40 PM.

The Commission subsequently issued a denial of confirmation of the appointing authorities' action (note attached signed statement).



Frank N. Blake
Clerk for the Commission

FNB/lm

cc: Act 78 Commissioners
City Clerk
City Manager
Police Chief
Robert Petty (Hatchett)
Robert Petty's Personnel File
Fred Cross, Attorney
Ron Chapman, Attorney

IN THE MATTER OF THE HEARING OF

ROBERT J. PETTY

OPINION OF THE CITY OF TROY
FIREMAN AND POLICEMAN CIVIL SERVICE COMMISSION

This matter comes before the Commission upon the request for a hearing filed by Robert J. Petty, a probationary police officer with the City of Troy, whereby he appeals the decision of the City of Troy City Manager, Frank Gerstenecker, the appointing authority, to deny a permanent appointment of Robert J. Petty as a City of Troy Patrolman.

Pursuant to Section 11 of the P.A. 1935, No. 78, hereinafter called "Act 78". Robert J. Petty was informed in writing of the reasons for the denial as set forth in hearing Exhibit number 7, being Captain Terry Moore's letter to Patrolman Robert Petty, dated May 1, 1981, and the letter of Chief John T. Donovan, dated May 21, 1981, to the Troy City Manager. (Both letters are attached to this opinion as Exhibit A and incorporated herein by reference.)

This Commission shall apply the holdings of two cases of the Michigan Court of Appeals as the standard for reviewing the written allegations and the sworn testimony and exhibits presented at the hearing. The applicable cases are City of Troy v Troy Civil Service Commission, (1978) 81 Mich App 585 and Harmon v Civil Service Commission for Fire and Police Departments of the City of Southfield, (1979) 91 Mich App 731.

The Troy case (supra) requires that the appointing authority establish cause at a hearing and the Harmon case (supra) establishes the degree of cause necessary, that is, the probationer has failed to satisfy his superior's expectations, and the charges have relevance to a person's fitness for police work. They have been supported by competent, material and substantial evidence without any arbitrary or capricious reasons or engagement in racial, sexual or other illegal discriminations.

This Commission has considered the testimony of witnesses on behalf of the City of Troy whose testimony related to the factual allegations contained in Exhibit A and whose testimony dealt more particularly with why these incidents lead Chief Donovan to the conclusion that Robert J. Petty did not meet the department's expectations for a permanent police officer. The Commission considered the Exhibits admitted into evidence by the City of Troy and by stipulation of the parties. Finally, the testimony of Robert J. Petty was considered by the Commission.

The Commission has reviewed carefully the Patrolman Performance Evaluation forms (Hearing Exhibits 5 - A, B, C, D and E) prepared by the officers in supervision of Robert J. Petty during the one (1) year probation. Evaluations A through D, inclusive, covering the period of June 7, 1980 through January 31, 1981, contain predominantly favorable reports on Petty's performance and ratings of adequate or adequate to superior in the majority of categories.

The final evaluation for the period January 17, 1981 to May 12, 1981, contains a grading of predominantly unfavorable ratings of Petty's performance with notations on the various categories related to the items set forth in Exhibit A hereto - the denial letter.

*Attachments
to minutes
of 6/8/81*

The evaluation report of May 12, 1981, the testimony of Lt. Lawrence Carey, Capt. Terry Moore and Chief John T. Donovan relate directly to the incidents set forth in Exhibit A. From these incidents, these witnesses concluded that Officer Petty's performance was not satisfactory as evidenced by acts of dishonesty, insubordination, misfeasance, malfeasance, exercise of poor judgment, failure to follow proper police procedures, improper personal conduct and mistreatment of citizens.

These allegations are each of extreme importance in determining whether or not a probationary police officer should be retained, but these are conclusions, and as dictated by the Harmon (supra) decision, must be supported by competent, material and substantial evidence.

As to the allegation of dishonesty, the City cited the incidents concerning the search for the hammer, the search for the marijuana and the search for the gun as being evidence of such conduct. This Commission cannot agree with that conclusion and finds no evidence of a sufficient degree to support a conclusion that Robert Petty was dishonest.

Insubordination is cited by the City and supported by the evidence presented concerning Robert Petty's failure to follow orders relative to traffic enforcement patrol versus patrol of residential and business areas, his improper dress, and his failure to satisfactorily respond to the allegations contained in the May 1, 1981 memorandum (Exhibit A). The Commission reviewed the activity reports of Robert Petty with those of fellow officers as contained in Exhibit number 9 and find that the reports disclose no unreasonable amount of traffic activity as compared with the other officers over the same periods. The improper dress allegation is one not supported by any showing of a departmental code violation and no showing of being out of uniform and therefore without merit. Finally, the refusal to answer the allegations in writing, as requested by Chief Donovan, is a serious allegation. A police officer must be prepared to disclose his on-duty conduct to his superiors at all times. Robert Petty's answers were sketchy at best and not suitable under normal circumstances. However, the Commission concludes that the circumstances under which Robert Petty was asked to respond were at the end of his probationary period and concerned incidents that had occurred in some cases, months earlier. Clearly, Robert Petty was being carefully analyzed at that point in time by his superiors and he, without doubt, felt threatened. This situation resulted in his seeking legal advice and was followed by his cursory responses. This Commission is not prepared to conclude that the brief response of Officer Petty can be grounds to conclude that he was insubordinate, given the surrounding circumstances. The evidence presented regarding insubordination is not sufficient to sustain the conclusion of the City.

Misfeasance and malfeasance are also alleged. Misfeasance is generally the improper performance of some act which one may lawfully do. Malfeasance is generally the performance of an act which a person ought not to do at all, or the unjust performance of an act which a party had no right to do. Much of the evidence presented could arguably fit into either of these categories. The Commission chooses to relate the evidence regarding the pushing of a vehicle and D.U.I.L. arrest, the driver's license incident involving Mr. Ates, and the mini-bike arrest to those allegations. The Commission cannot conclude that these events are of such a nature as to lead one to the conclusion that Robert Petty is guilty of misfeasance or malfeasance. The evidence clearly showed that the D.U.I.L. - pushing incident occurred as a result of the directive of a superior officer, the license of Mr. Ates was not in fact valid in Michigan, and there was no arrest evolving from the mini-bike incident. Robert Petty admitted that he forgot to inform Mr. Ates of his "bond" option, but that event is not of any real import to one's ability to perform police functions.

One's use of poor judgment is a critical allegation and again one that contains a thread that runs throughout the evidence. The incident involving the drawing of one's service weapon during the C.C.W. arrest, the overzealous traffic enforcement, the D.U.I.L. arrest, the report writing discrepancies were all cited as examples of poor judgment exercised by Robert Petty. These facts as submitted do not allow us to find Robert Petty guilty of poor judgment. While the drawing of a weapon in the situation as presented can be open to some question, there was no standard offered by the department as to when the drawing of one's weapon is allowed or not. The traffic enforcement allegation is not supported in the activity sheets, and the D.U.I.L. arrest was not shown to be illegal by the City and was apparently supported by the condition of the driver.

Failure to follow police procedures receives its support from the driver's license incident of Mr. Ates, the failure to call for back-up on a D.U.I.L. arrest, the use of the telephone for personal business in the booking area, the over-active traffic enforcement while on midnight shift, improper dress and use of another officer to do an impound write-up. The traffic enforcement and the improper dress incidents are without any adequate support and proof. While the Ates, the back-up, and impound incidents are supported, each one is of an isolated nature and not indicative of repetitive conduct.

Improper personal conduct is alleged by the incidents involving P.S.A. Fernandez, the wastebasket kicking incident, the telephone call of Robert Petty's wife and possibly the girl-friend call in the booking area. The Commission finds nothing of a serious enough nature in any of these allegations to comment further. The incidents are each isolated and of a minor nature.

Mistreatment of citizens is only vaguely supported by the Ates license incident and is clearly not supported by any evidence.

Police Chief Donovan stated to this Commission that he believed that not one of the incidents cited by him alone could sustain a reasonable basis for the discharge of this officer. His position is that the totality of the incidents supports his conclusion that Robert Petty has failed to satisfy the expectations of his superiors. This Commission does not reject that position and in fact concludes that the Harmon (supra) standard allows for the review of the entire probationary period with respect to the performance of the probationer.

In summary, this Commission has determined that from June 7, 1980, to January 21, 1981, a period of over seven (7) months, Robert Petty performed adequately and even above adequately. The period following January 21, 1981 to May 1981, was less conspicuous in terms of Robert Petty's performance, but this Commission is not prepared to conclude that upon the total evidence and record as presented, that Robert Petty did not meet the reasonable expectations of his superiors.

The incidents brought forth had very little to do with Robert Petty's fitness for police work. There was no evidence that he mistreated the public or his fellow officers, that by his conduct he endangered the public or his fellow officers, that he consistently and directly violated his department's policies or that he exhibited an attitude creating conflict and disharmony within the department. The Commission concludes that the burden of proofs required under Act 78 and the Harmon (supra) decision have not been sustained.

Therefore, this Commission reverses the decision of the appointing authority and orders that Robert J. Petty be granted permanent appointment as a patrolman with the City of Troy. Further, pursuant to the dictates of Section 14 of Act 78, such reinstatement shall be with full pay for the entire period during which Robert J. Petty has been prevented from performing the functions of a patrolman less wages actually earned during the period. Soloman v Highland Park, (1975) 64 Mich App 433.

Dated: July , 1981

Norman D. Michaelson
Norman D. Michaelson, Chairman

Robert J. Wangbichler
Robert J. Wangbichler

E. Ray Strecker
E. Ray Strecker

LAW OFFICES
RAMSDELL, OADE & FELDMAN

25130 SOUTHFIELD ROAD
SUITE 100
SOUTHFIELD, MICHIGAN 48075

(313) 552-9400

JOHN H. RAMSDELL
K. PRESTON OADE, JR.
BERNARD FELDMAN

July 29, 1981

Handwritten:
C/O
S/3/81
A...

Frank Blake, Secretary
Troy Civil Service System
500 W. Big Beaver Road
Troy, Michigan 48084

re: City of Troy vs. Daniel M. Bowe

Dear Mr. Blake:

Attached hereto please find two opinions and an order of remand in the matter of Daniel Bowe. You will note upon reviewing said order that the decision of the Act 78 Civil Service Commission in the matter of Daniel Bowe has been reversed and that the Court has made certain orders with respect to both the manner of preparing written finding of fact and conclusions of law as well as the authority of the Act 78 Civil Service Commission to modify penalty. You will note upon reviewing the order of remand that the Civil Service Commission is given 45 days to comply with the order.

Please contact me if you have any questions regarding this matter.

Continued
Per Cross

Very truly yours,

RAMSDELL, OADE & FELDMAN

Handwritten signature: Bernard Feldman
Bernard Feldman

BF/cl

xc: Frederick M. Cross, Jr.
Daniel M. Bowe

REC'D JUL 30 1981

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

CITY OF TROY,

Plaintiff-Appellee,

-vs-

Case No: 80-213558-AA

DANIEL M. BOWE,

Defendant-Appellant.

ORDER OF REMAND

At a session of said Court held in the
County Courthouse, City of Pontiac, County
of Oakland, State of Michigan, On JUL 29 1981

Present: Hon. GENE SCHNELZ
Circuit Court Judge

This cause having come on to be heard by initiation of
a Claim of Appeal on behalf of Defendant-Appellant, DANIEL BOWE,
from an adverse decision of the City of Troy Act 78 Civil Service
Commission, and this Court having had the opportunity to review
the Briefs of counsel and to hear oral argument on behalf of
both parties, and having had the opportunity to review the trans-
cribed record, and for the reasons set forth in this Court's
written opinion of May 29, 1981, ^{and July 24, 1981} and this Court being otherwise
fully advised in the premises;

IT IS HEREBY ORDERED that the decision of the City of
Troy Act 78 Civil Service Commission in the above-entitled matter
is hereby reversed and remanded.

IT IS FURTHER ORDERED that the Act 78 Civil Service
Commission prepare detailed findings of fact and conclusions of
law based upon the evidence and matters officially noticed.

IT IS FURTHER ORDERED that findings of fact shall be
accompanied by a concise and explicit statement of the underlying
facts supporting them.

A TRUE COPY
LYNN D. ALLEN
Oakland County Clerk - Register of Deeds
by [Signature]
Deputy

1981 JUL 30 1981

IT IS FURTHER ORDERED that the parties shall be entitled, if they so choose, to prepare proposed findings of fact.

IT IS FURTHER ORDERED that the decision of the Act 78 Civil Service Commission that it could not modify the decision of the Appointing Authority is hereby reversed and it is further ordered that if the Act 78 Civil Service Commission wishes to modify penalty, it may do so in accord with Pothoff v Civil Service Commission, 16 Mich App 697 (1969).

IT IS FURTHER ORDERED that the City of Troy Act 78 Civil Service Commission shall prepare said findings of fact and conclusions of law and shall submit them to this Court within forty-five (45) days of the date of the entry of this Order.

GENE SCHNELZ

GENE SCHNELZ
Circuit Court Judge

LAW OFFICES RAMSELL, GADE & FELDMAN 25130 SOUTHFIELD ROAD SOUTHFIELD, MICH. 48075 (313) 352-9400

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

CITY OF TROY,

Plaintiff-Appellee,

-vs-

Case No. 80-213558-AA

DANIEL M. BOWE,

Defendant-Appellant.

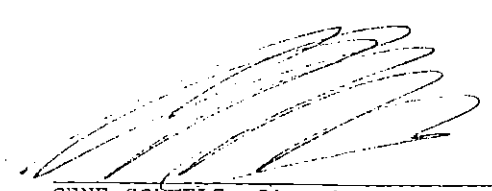
OPINION

This case is currently before the Court on Defendant-Appellant Daniel M. Bowe's Motion for Reconsideration and Modification of this Court's Opinion dated May 29, 1981. Appellant specifically requests this Court to rule whether or not the City of Troy Civil Service Commission has the authority to review the reasonableness of the penalty imposed on Mr. Bowe, and to potentially modify the decision of the appointing officer, or to render a compromise.

The Court finds that the municipal civil service commission does possess the power to amend, modify, or reduce the penalty imposed by the appointing officer in this case. Potthoff -v- Police and Fire Department Civil Service Commission of the City of Saginaw, 16 MICH APP 697, 699, 700 (1969) (per curiam); CF. Groehn -v- Corporation & Securities Commission, 350 MICH 250, 259-261 (1957) (State Civil Service Commission). The assumption of the Troy Civil Service Commission that it lacked the right to modify the decision or to render a compromise (see transcript, September 17, 1980, p5) was clearly erroneous.

This opinion is to be read in conjunction with the Court's prior opinion dated May 31, 1981.

DATED: July 24, 1981



GENE SCHNELZ, Circuit Court Judge

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

CITY OF TROY,

Plaintiff-Appellee,

-vs-

Case No. 80-213558-AA

DANIEL M. BOWE,

Defendant-Appellant.

OPINION

This case is before the Court on police officer Daniel Bowe's Appeal from the Order of Dismissal entered against him on October 1, 1980 by the City of Troy Civil Service Board. For the the reasons set forth below, the Court remands this case to the Troy Civil Service Commission for further proceedings consistent with this opinion.

Officer Bowe was hired as a probationary police officer for the City of Troy on August 6, 1979. At the end of his probationary period in August of 1980, he was informed that he would not receive permanent appointment to the police force. The appointing officer had determined that his conduct or capacity had not been satisfactory; more specifically, the appointing officer believed that there had been a failure of good behavior on the part of officer Bowe. Officer Bowe appealed this determination and requested and received a public hearing pursuant to MCLA 38.511 and 514. Following the hearing, the Troy Civil Service Commission affirmed the decision of the appointing officer denying officer Bowe permanent appointment. A copy of the order is appended to this opinion. Officer Bowe filed his appeal to this Court in October, 1980, pursuant to MCLA 38.514.

The pertinent part of the order denying officer Bowe permanent tenure statute provides:

"(T)he decision of the appointing officer is affirmed for the reason that said decision was not arbitrary or capricious, was not based upon racial, sexual or other illegal discrimination and there was sufficient evidentiary basis established for Daniel Bowe's superior officer to be dissatisfied in his expectations of performance." No reasons - other than the appointing officer's dissatisfaction - are given for the officer's dismissal. Apart from the recital of the lack of arbitrariness and capriciousness and the lack of illegal discrimination, no specific findings of fact are made. Lacking specific findings of fact, this Court is at an extreme disadvantage on appeal. Appellate review of such orders is delineated by the Michigan Constitution:

"All final decisions, findings, rulings, and order of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings, and orders are authorized by law, and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record.....

Constitution 1963, Art. 6, §27. Thus, the nature of a court's review of a decision of a Municipal Civil Service Commission is to determine whether the decision is supported by competent, material, and substantial evidence. Core -v- Traverse City, 89 MICH APP 492, 498 (1979). In order to facilitate constitutionally mandated judicial review, the legislature has enacted the Administrative Procedure Act, MCLA 24.201 et seq. While this Court realizes that the Act does not apply per se to municipal agencies or commissions, Righter -v- Adrian Civil Service Commission, 1 MICH APP 468, 473 (1965), the Michigan Court of Appeals has applied various provisions of the Act to local civil service commissions by analogy. Justewicz -v- Hamtramck Civil Service Commission, 65 MICH APP 555, 561 (1975). (analogy to MCLA 24.286(1) and 24.304 (2); Montiv -v-

East Detroit Civil Service, 54 MICH APP 510, 515 (1974) (analogy to MCLA 24.306). This Court believes that MCLA 24. 285 should be applied to the Troy Civil Service Commission proceedings in this case. The pertinent section of the statute provides:

24.285 Final decisions or orders, time, form, contents, basis, copies for parties; findings, basis, form, contents; rulings on proposed findings; conclusions

Sec. 85. A final decision or order of any agency in a contested case shall be made, within a reasonable period, in writing or stated in the record and shall include findings of fact and conclusions of law * * *. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them. If a party submits proposed findings of fact which would control the decision or order, the decision or order shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by authority or reasoned opinion. A decision or order shall not be made except upon consideration of the record as a whole or such portion thereof as may be cited by any party to the proceeding and as supported by and in accordance with the competent, material and substantial evidence.


The necessity for a detailed finding of fact is intended to facilitate appellate review by providing a precise statement of what evidence, on the record, supports the civil service commission's ruling. See Viculin -v- Department of Civil Service, 386 MICH 375, 404-405 (1971); Consumers Power Co -v- Public Service Commission, 78 MICH APP 581, 585 (1977). While the record in this case is replete with instances of absurd and infantile police misconduct, without specific findings of fact, this Court is unable to review the decision. Accordingly, this Court is obligated to remand this matter to the Commission for a supplemental opinion consistent with the guidelines below.

The Court emphasizes that every probationary police officer who is denied permanent employment is entitled to a hearing at which cause for the denial must be established. Troy -v- Troy Civil Service, 81 MICH APP 585, 590 (1978). Furthermore, while a

probationer may be denied permanent appointment where his conduct is not satisfactory to the appointing officer, the appointing officer does not have unlimited discretion in denying permanent employment. Harmon -v- City of Southfield, 91 MICH APP 731, 735 (1979). While a probationary officer may be refused permanent employment for lesser cause than a tenured officer, Harmon, supra, at 735, this Court believes that just cause for refusal must be both related to the officer's duties as a police officer and restricted to misconduct of the same nature as that specifically enumerated in MCLA 38.514. Core, supra, at 500. Since officer Bowes was specifically charged with "failure of good behavior on his part" (see letter of chief of police to Troy City Manager, City's exhibit 2), the record must therefore reveal the officer's misconduct for "incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment to the public, neglect of duty, or violation of the provisions of this Act on the rules of the Commission." MCLA 38.514. See Harmon, supra, 735 n.1; see generally, Troy -v- Troy Civil Service, supra. The order of the Civil Service Commission shall include, inter alia, findings of fact and conclusions of law, in accordance with MCLA 24.85, which will enable this Court to make a meaningful appellate review. See Harmon, supra, at 735, 736.

This case is thus remanded for further proceedings consistent with this opinion.

DATED: May 29, 1981



GENE SCHNELZ, Circuit Court Judge