

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.

Attest
By [Signature]
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