

THREE WINS FOR THE COPS

By Timothy R. Smith, Esq.



Three recent decisions favorable to police officers were recently issued and are worth reviewing.

In East Orange Superior Officers Association, Local No. 16 and City of East Orange, New Jersey, PERC Docket No. AR-2014-404, the grievant, an East Orange police captain, had been disciplined for failing to personally take charge of an investigation. The City contended this was a violation of the department's rules requiring supervisors to personally respond to any "major incident." The incident occurred in the middle of the night, when the captain was the supervisor on duty. A male had been brought to East Orange General Hospital with a non-serious stab wound.

The Department sent several officers to the hospital. The victim was not cooperative and did not want to make a report. The officers did not believe his story. Also, it turned out that the stabbing had not occurred in East Orange. The captain monitored the investigation from headquarters via police radio. Thereafter, the Department deemed the stabbing a "major incident" requiring the captain's presence at the hospital.

But the captain successfully argued at his PERC arbitration hearing that the term "major incident" had not been defined by the department's rules. Given that ambiguity, the arbitrator found the captain had reasonably exercised his discretion in not personally going to the hospital. The arbitrator noted that the stabbing had not occurred in East Orange, the wound was not serious, and the victim was uncooperative. The arbitrator further observed that competent officers had been sent to the scene, the captain was busy that night with administrative duties and, ultimately, nothing would have been accomplished by his presence at the hospital. Thus, the arbitrator dismissed the charge and vacated the captain's five-day suspension without pay.

In City of East Orange and F.O.P. Lodge No. 111, PERC Docket No. AR-2014-588, disciplinary charges were brought against an East Orange police officer based on the claim that she had signed a court officer's name on an authorization to release a prisoner R.O.R. without that court officer's permission. This matter demonstrates how a vigorous defense can defeat facially valid charges.

The PERC arbitration hearing showed there had been a long-standing arrangement between the court officer and the Department allowing police officers to sign the court officer's name to R.O.R. authorization forms for minor, non-DWI traffic violations. On this occasion, when the court officer afterwards saw the form, he realized the prisoner was a relative of his and his name should not have been on the paperwork. He reported the incident to his supervisors and contended that the police ought not to have signed his name to the form without having first consulted with him. But the grievant police officer brought to the arbitration hearing several other officers who had signed the court officer's name to similar paperwork and who testified that doing so was an accepted practice, based on an understanding between the court officer and the Department. The grievant officer also testified that there had been animosity between herself and the Chief due to her union activities and no other police officers who had engaged in similar conduct had ever been disciplined.

Based on the grievant officer's proofs, the arbitrator found that the officer had done nothing wrong, but had merely followed the common practice. While the arbitrator did not find an anti-union basis for the disciplinary charges, she stated that it "remained suspect" that the officer in question (the Department's P.B.A. President) was the sole officer disciplined for the conduct at issue.

In the Matter of Telina Hairston, City of East Orange, CSC Docket No. 2015-1098 the officer filed a petition for interim relief with the Civil Service Commission complaining the Department had included in the PNDA a claim that the officer had violated a "Last Chance Agreement" that was not signed until after the incident that was the subject of the disciplinary charges.

The Commission ruled that the officer could not be charged with violating an Agreement that, while in effect at the point that the disciplinary charges were brought, was not in effect at the time of the incident giving rise to those charges. The Commission also stated an infraction that occurs after the incident that is the subject of present charges cannot be used to determine the proper sanction for those charges. Accordingly, the Commission ordered the deletion of any reference to the "Last Chance Agreement" in the PNDA.



Timothy R. Smith is a certified criminal trial attorney and a partner at Caruso Smith Picini located in Fairfield, NJ. Mr. Smith was formerly employed as a police officer, detective, police union president and member of a prosecutor's office legal staff prior to transitioning into private legal practice. These experiences motivated Mr. Smith to focus his practice in the area of criminal and disciplinary defense.

Mr. Smith's expertise spans federal, state, and municipal courts as well as administrative proceedings, and his practice areas include: domestic violence; expungements; D.Y.F.S. matters; traffic summonses (including D.W.I.); weapons forfeitures; public employee pension applications and appeals; appellate practice; and civil defense.