



LEGAL DEFENSE TRUST TRAINING BULLETIN

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“YOU NEVER HIT THE STREET, HOFFMAN” AN INGLEWOOD POLICE CAPTAIN’S LONG ROAD TO JUSTICE

Usually in these newsletters, we discuss general principles of law, the law applied to specific factual circumstances, or important cases from the Courts of Appeal and Supreme Court. Occasionally, we are involved in a case at the trial court level, which is noteworthy either because of its extraordinary facts or because of the legal rights obtained.

The case of *Thomas Hoffman v. City of Inglewood, et. Al*, LASC No. YC021707, is worthy of discussion, both for its unusual facts and the rights and remedies established in the case. Since this one is undoubtedly headed for the Court of Appeal, we can report on developments as the case continues.

Thomas Hoffman had been employed by the Inglewood Police Department in July 1993 for nearly 20 years. He had been promoted to the position of captain, but was still in the first year of his promotional appointment, as was, therefore, subject to the customary “promotional probation”, which is utilized in most agencies for the first year after promotion to a supervisory or management position. Usually the local rules provide that during the promotional probationary period, the incumbent may be returned to his former position if he fails to perform satisfactorily in

the position to which he was promoted. Many agencies regard such newly promoted employees as being, in a sense “at will” in their new positions, until they have completed the promotional probationary period. Commonly, the local rules provide that if such employees are deemed to be unfit in their new positions, they can be returned to their former positions without the right to appeal.

For those employees covered by the Public Safety Officers’ Procedural Bill of Rights Act, this is simply incorrect. *Henneberque vs. Culver City*, (1983) 147 Cal. App. 3d 250 stands for the proposition that demoting a police employee, and/or reducing his salary, automatically entitles the employee to an administrative appeal under Government Code Section 3304(b), regardless of his “promotion probationary status.”

On the other hand, some agency rules describe generally what failures will result in promotional probation demotion in such a way as to deprive the appointing authority of unfettered discretion in selecting the employee for demotion.

The Inglewood rule provided essentially that a newly promoted probationary employee could be demoted for demonstrated inability to perform or for failure of good behavior. The rule provides that the

appointing authority can only make the recommendation for demotion, which must be acted upon by the city personnel department.¹

Tom Hoffman was one of four captains in the Department. The Department had just been taken over by a new Chief of Police, Oliver Thompson, who quickly developed conflicts with Hoffman. However, it is important to note the neither the Chief nor the Department ever claimed that the subsequent actions discussed below were based upon inability or failure of good performance. To the contrary, all agreed that Captain Hoffman was performing pretty well in his position. Nevertheless, the acrimony between the Chief and Hoffman was well-known throughout Department Staff.

In April and May 1993, revenue shortfalls caused by City Manager, Paul Eckles, to order budget cuts in all departments, including the Police Department. Through the course of meetings among Chief Thompson, City Manager Eckles and Personnel Director Robert Wilson, a plan for eliminating positions in the Police Department was developed. The plan called for elimination of one of the Captain positions. There were also lieutenant and sergeant positions to be cut, but all of these were currently filled by *acting* appointments.

It developed that Thompson selected Hoffman to lose his position, and Tom was notified around the first of July that his position was being eliminated and he would be "laid off" with severance benefits and entitlement to unemployment insurance benefits. The notice provided, however, that he had "bumping rights" in the lieutenant

position and could accept a downgrade to lieutenant to avoid unemployment.²

Under the existing Police Management MOU, in the event of a layoff, the Department was required to create a "Preference for Retention-Order of Separation" list before targeting an individual for layoff. In mandatory language, the rules required that the order of separation had to be based 50 percent on performance, as determined and supported in writing, and 50 percent on seniority to the position.

Faced with the prospect of sudden unemployment, Hoffman chose to exercise his "bumping" rights and be involuntarily demoted to lieutenant. However, at the same time, he attempted to grieve the violation of the MOU because no order of separation was established, and he had not received the required performance appraisal supported in writing. Initially, Thompson and Wilson took the position that Tom was not entitled to grieve, because he wasn't "laid off." As Wilson put it to Tom, "You never hit the street, Hoffman."

Initially, we challenged Thompson and Wilson over their insistence that Hoffman was not entitled to an order of separation because he remained unemployed. The absurdity of this position became readily apparent when we pointed out that one could never exercise "bumping" rights unless one had been laid off. Without an imminent separation or layoff, there would be no reason to bump even an acting lieutenant out of his position.

The next excuse offered by Thompson and Wilson to deny Hoffman his entitlement to an order of separation was that there was "no written performance evaluations

¹The defendants in this case would later claim the Hoffman's "promotional probation" meant he had no "property interest" in his captain position; hence, he could not establish any of his federal civil rights claims. They were wrong.

²When all the dust settled, only one regularly appointed police employee lost his position: Hoffman. All others who were downgraded were dropped back from acting appointments only.

available” for Hoffman, and for the only other Captain who was close in seniority to Hoffman. In fact, Hoffman and the other Captain were appointed on the same day, although Hoffman had served for nearly a year as acting Captain, during which time he was salaried and rated as a Captain. Nevertheless, Wilson persisted in considering both Captains equal in seniority. Thompson then explained that since there were “no discernable difference” in the performance of the two captains, there was no necessity of preparing the required performance appraisals in writing. Thus, they manufactured a “tie” in preference for retention. Since there was a “tie,” they reasoned, they could resort to a “tie breaker”. The tie breaker they decided upon was placement on the eligibility list for appointment to regular Captain, and the other Captain was very slightly ahead of Hoffman numerically on the list. Never mind that by applying the “rule of three,” which was utilized in Inglewood, they were really considered equal, or that there was nothing in the rules or in past practice which permitted Thompson and Wilson to supplant the order of separation established in the MOU, with placement on an eligibility list. Placement on the eligibility list has nothing to do with performance in the position, which is, after all, what the rules were aimed at establishing, along with seniority, as the sole factors in the preference for retention equation. We took exception to this “administrative sleight of hand” from the beginning, but Thompson and Wilson were confident they could pull it off.

Once Wilson finally acknowledged that Thompson had the benefits of the grievance procedure available to hi, we proceeded to the final step of a “hearing” before the City Manger, Eckles.

Meanwhile, Thompson, Wilson and Eckles concocted another end-run on the rules. The administrative services manager, a civilian named Weinberg, was elevated, on the

same date that Hoffman was demoted, to the position of “Commander, Office of Administrative Services”. Which position was previously held by a Captain. The Captain who held that position was rotated to the Office of Operations, while that Captain was rotated to the Office of Operations, while that Captain was rotated to the Office of Investigations, assuming the position previously held by Hoffman. A personnel order on the first of July, 1993, memorialized the demotion of Hoffman to Lieutenant and the elevation of Weinberg to Commander, a staff position. The new Commander was to be known as “Staff Five,” which was previously designated for a Captain. Mr. Weinberg helped himself to a badge with the title “Commander”, which in every aspect was identical to the captain’s badge which Hoffman surrendered. However, the ultimate insult occurred when we learned that Mr. Weinberg’s salary was elevated to the same level previously held by Captain Hoffman.

The scheme required the approval of Eckels, ans well as Wilson. Hoffman lost his take-home car, and Weinberg acquired one. The Department letterhead was altered to show the names of the tope staff officers (the Chief, three captains and the new “commander”).

We asked City Manager Eckles to recuse himself as a hearing officer based on the holding in Mennig vs. Culver City (1978) 86 Cal. App. 3d 341 and some federal cases that stand for the proposition that where the decision maker has his own stake in the outcome and in “embroiled” in the dispute at issue in the hearing, due process demands that an uninvolved, impartial reviewer be substituted. Eckles was necessarily involved in all of these administrative schemes which were at issue in the hearing. Furthermore, in order to find for Hoffman, he would have to undo, almost a year after the fact, an elaborate series of personnel actions, thereby upsetting

scores of individuals who were impacted by the revenue shortfalls, as well as generating lack of confidence and trust in his decisions. As expected, Eckles refused to recuse himself and presided over the hearing. This added an additional layer of due process violation, on top of those that were already established.

Municipal Code Section 2-47 specifically provided that if an employee is laid off from a position, and a new position is established, which features all or some of the duties of the former position, the laid-off employee is entitled to preference for appointment to the new position. This section clearly applied to Hoffman, who should have had the opportunity to assume command of the office of Administrative Services, in preference to Weinberg. However, honoring the municipal code section did not fit into the plan.

The City Manager's written decision dismissed our claim that the rules regarding order of separation were not respected, with the statement "It's too bad no written performance evaluations were available which would have spelled out a clear difference in performance," and since the two captains were "tied" in seniority, the City was justified in going to a "tie breaker" which permitted Eckles to justify all that happened to Hoffman.

Next, we brought suit into the Los Angeles Superior Court against Eckles, Thompson, Wilson and the City of Inglewood. We joined a petition for writ of mandate to overturn the City Manager's hearing, with a complaint for damages for violation of civil rights, wrongful termination in violation of public policy, wrongful termination in violation of law (with reference to the municipal code), constructive discharge, and constructive discharge in violation of public policy. We also claimed that Eckles, Thompson and Wilson conspired to bring about the reduction of Hoffman and the elevation of Weinberg, in violation of the

rules of law.

Meanwhile, Tom Hoffman, believing that his career was permanently on ice in Inglewood, left to become a Captain in West Sacramento. He has since been promoted to deputy chief of police.

In 1996, we moved to Superior Court in Torrance to grant our petition for writ of mandate overturning the City Manager's hearing. The Court granted the writ and ordered that Hoffman be reinstated to his Captain's position in good standing, with all back pay and benefits. The City defendants continued to fight every effort by Hoffman to achieve justice, by engaging in endless arguments over the amount of back pay that was due, and the value of the take-home car during the time that Hoffman drove his personal car to work as a lieutenant. They didn't get around to actually arranging for his reinstatement until 1997. However, the offer to reinstate Hoffman to his captain's position was accompanied by an impossible condition. They ordered Hoffman to assume his position within a week. As a condition of reinstatement, he had to prove that he had resigned his position in West Sacramento. Further, he was told that there was still only three captain positions, and they would begin the layoff process anew to separate Hoffman from his position.

Meanwhile, Thompson had completed performance appraisals on Hoffman and the other captain and filed these with the Court, as evidence that complying with the rules would be futile, since performance appraisals showed each captain to be identical in every performance category. The contrived nature of this self-serving maneuver was obvious to the Court.

Of course, Hoffman did not accept the reinstatement. The defendants then claimed that this lawsuit was mooted by his failure to accept reinstatement.

Finally, the case went to trial in July

1998. At trial, various efforts by defendants to deprive Hoffman of his position and of his due process rights were fully litigated. We went to the jury on all claims originally pleaded, including conspiracy. When it was over, the jury voted 11 to 1 to award Hoffman \$805,000 including punitive damages awards against Eckles for \$62,500, Thompson for \$38,750 and Wilson for \$31,700, on Hoffman's federal civil rights claims.³

In addition to the various procedural due process violations arising from the defendants' failure to follow the mandatory rules of Inglewood, substantive due process was violated by pretextual elimination of a captain's position "due to revenue shortfalls" in order to demote Hoffman and elevate Weinberg outside of the civil service rules.

The civil rights plaintiff who prevails in such a case is entitled to an award of attorney's fees and costs, under the 1976 Civil Rights Attorney's Fees Awards Act, which Congress enacted as part of the civil rights statutes, at 42 USC Section 1988. This motion is virtually guaranteed to succeed, which will take the price of the taxpayers of the City of Inglewood to over one million dollars.

Just before the preparation of this article, the Superior Court denied these defendants' motion for a new trial and motion for judgment notwithstanding the verdict, setting the stage for the City' appeal. Interest continues to accrue on the judgment at the rate of 7 percent per yea. In its orders denying the post-trial motions, the Court specifically found that there was substantial evidence to sustains a jury's verdict on all claims, including conspiracy. The Court also found that the damages were reasonable in view of the evidence, and that punitive damages bore

a reasonable relationship to the overall verdict. We believe that verdict is rock-solid and will be upheld on appeal, hopefully with a published decision that will establish and recognize rights for all California law enforcement employees who may be victimized in a similar manner.

The facts of the Hoffman case are probably extraordinary, However, similar claims may be made when a public employee is victimized by administrator who seek to end-run civil services rules and protections, where personnel decisions are made for pretextual reasons and where the hearing proved in accordance with the rules is a sham.

Tom Hoffman's road to justice has ben long and hard, and will likely continue for perhaps two more years. However, this case illustrates that there are forums available to those with meritorious claims, who are willing to endure the gauntlet and go the distance.

We welcome inquiries from interested persons regarding the Hoffman case and will gladly accept and support any applications from police association counsel to submit *amicus curiae* briefs when we get to the Court of Appeal.

STAY SAFE!

-Michael P. Stone-

³The court found, as a matter of law, that Hoffman had a "property interest" in his position, protected by the Due Process Clause.