

HON. PARIS K. KALLAS

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PUBLIC SAFETY CIVIL
SERVICE COMMISSION

IN THE SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

CITY OF SEATTLE, SEATTLE POLICE
DEPARTMENT,

Petitioner,

v.

CITY OF SEATTLE, PUBLIC SAFETY
CIVIL SERVICE COMMISSION, and ERIC
WERNER,

Respondents.

Case No. 10-2-07645-0 SEA

ORDER

This matter comes before the court on the Seattle Police Department's (Department) Petition for Writ of Certiorari. The court has considered the Department's opening and reply briefs, Respondent Eric Werner's opposition brief, the supplemental briefs of the parties, the record of the proceedings before the Seattle Public Safety Civil Service Commission, and argument of counsel.

On review, this court determines whether the Commission's decision is supported by substantial evidence and whether the Commission's decision was contrary to law.

ORDER - 1

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1 RCW 7.16.040 and. 120; *Hilltop Terrace Ass'n v. Island County*, 126 Wn.2d 22, 29 (1995).
2 Substantial evidence is evidence of a sufficient quantity to “persuade a fair-minded, rational
3 person of the truth of the finding.” *Hilltop Terrace*, 126 Wn.2d at 34. In addition, the review
4 must be based on the record developed before the administrative agency. *Chaussee v.*
5 *Snohomish County Council*, 38 Wn. App. 630 , 643-44 (1984).

6 Here, the Department raises several challenges to the Commission’s decision. Shortly
7 before oral argument, however, the decision in *City of Seattle v. Public Civil Service Commission*
8 *and Richard Roberson*, ____ Wn. App. ____ (No. 63024-5-I, May 3, 2010) was issued, which
9 addresses several issues. Thus, the key remaining issue before this court is whether the
10 Commission’s use of comparable evidence was either factually insufficient or legally erroneous.
11

12 In Finding of Fact 29, the Commission found, in part: “The Commission majority is
13 concerned about the even-hand[ed]ness in which the Department is applying its rules. There is
14 evidence that employees in past cases involving dishonesty either received no suspension of
15 duties or only temporary suspension of duties.”
16

17 The Department correctly argues that the finding is not supported by substantial
18 evidence. To the contrary, none of the cases cited by the Commission include a sustained
19 finding of dishonesty (as opposed to other misconduct). Moreover, none of the cited cases
20 involve a sustained finding of intentional dishonesty in an investigation regarding use of force.
21 Nor did the Commission find that the misbehavior in the cited cases was either as serious as or
22 more serious than Werner’s dishonesty. In short, there is neither any evidence that other officers
23 who either engaged in the same behavior or who were disciplined for dishonesty were treated
24 differently.
25
26

1 The sole remaining basis cited by the Commission is a finding that Werner's termination
2 was not fair in light of his prior unblemished record. But the Commission did not indicate
3 whether this finding was dispositive, nor is there any indication that the Commission would
4 have reversed termination on this finding alone. Because the record fails to so indicate and in
5 light of *Roberson*, this matter is reversed and remanded to the Commission to determine whether
6 termination is appropriate where there is no evidence of lack of even-handedness in the
7 Department's disciplinary history.


8 **NOW, THEREFORE, IT IS HEREBY ORDERED** that

9
10 1. The Seattle Public Safety Civil Service Commission's January 21, 2010, Findings of
11 Fact, Conclusions of Law, and Order are reversed and the matter is remanded to the Commission
12 for additional findings and conclusion in light of this order.

13 2. In accordance with RCW 7.16.130, the Clerk shall transmit a copy of the judgment in
14 this matter to the Executive Director of the Seattle Public Safety Civil Service Commission.

15 3. The parties shall bear their own costs.
16

17
18 DATED this 4th day of June, 2010.

19 
20 _____
21 Paris K. Kallas
22 Chief Civil Judge
23 King County Superior Court
24
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