

BEFORE THE PUBLIC SAFETY CIVIL SERVICE COMMISSION
OF THE CITY OF SEATTLE

In the matter of the Appeal of))
LELAND O. GAYLES, Appellant)) FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

I. INTRODUCTION

On September 17, 1992 the Public Safety Civil Service Commission convened for a pre-hearing conference to rule on evidence to be presented by the Appellant and City re: his termination as a police officer with the Seattle Police Department.

Present were Chairperson Barbara Laners, Commissioner Jason King, Pro Tem Commissioner Steve Brown, and Ruby Dell Harris, Secretary and Chief Examiner. Representing the Seattle Police Department were Gary Keese, Assistant City Attorney, and Fred Treadwell, Legal Advisor for the Seattle Police Department. Also present were the Appellant and his attorney, Allan Munro of Bovy, Wampold and Munro.

At the pre-hearing conference, Appellant gave notice that one of his defenses would be that the Police Department had engaged in a pattern of conduct against him involving harassment and disparate treatment; that the manifestations were subtle, but persistent; and that testimony from a large number of witnesses about scattered incidents would be needed to show the pattern; and that the evidence would show the pressure Officer Gayles was under and would mitigate the nature of his conduct. The Department objected that the evidence would be irrelevant and would not establish a valid defense.

After discussion by both parties, the Commissioners ruled to allow the Appellant four (4) hours (excluding interruptions and cross-examinations) to present his best evidence on the issues of disparate treatment and harassment and then make a decision on the relevancy of the appellant's evidence. At the conclusion of the appellant's evidence, on October 7, 1992, Chairperson Laners announced the Commissioners' decision to grant the City's motion to limit the Appellant's evidence to testimony and materials related to the discipline in I.I.S. cases 90-21 and 91-13. The Commission weighed the evidence on disparate treatment and harassment, considering both direct testimony and cross-examination; determined that a pattern of Police Department officials singling him out for discipline had not been established; and decided that the additional testimony in the offer of proof would not, with the evidence already heard, establish such a theory. The Commission, therefore, ruled to exclude the testimony as irrelevant, but decided that evidence already heard bearing directly on the reasons given for the discipline in I.I.S. Cases 90-21 and 91-13 could be cited without having to be repeated. The Commission did agree to allow the evidence on disparate treatment and harassment to be included in the record as an offer of proof and as casting light on Officer Gayles' state of mind.

1.1 Appearances.

1.1.1 Appellant. The Appellant was represented by Attorney Allan Munro of Bovy, Wampold and Munro.

1.1.2 Department. The Department was represented by Gary Keese, Assistant City Attorney, City of Seattle Law Department and Fred Treadwell, Legal Advisor for the Seattle Police Department.

The Public Safety Civil Service Commission was advised by Jorgen Bader, City of Seattle Law Department.

1.1.3 Commission. Barbara Laners, Chairperson, presided over the hearings; Jason King, Commissioner; Steve Brown, acting as Pro Tem Commissioner for Daniel Oliver; and Ruby Dell Harris, Secretary and Chief Examiner, attended all meetings.

1.1.4 Witnesses. Witnesses for the Seattle Police Department were: Sgt. Robert R. McDonald, Cheryl Kiefer, Cynthia Sykes, Officer Gary Greene, Officer David Waltier, Lt. Steve Butler, Sgt. Daniel Beste, Lt. Gerald E. Taylor, Director of the Seattle Police Personnel Division Aaron Dean, Chief Patrick Fitzsimons, and Lt. James Pryor. Witnesses for the Appellant were: Roger Rivers, Marg Tomlinson, Officer K.C. Smith, Sgt. Kirby Leufroy, Frank LaChance, Connie Babcock, Sheryl Ann Perry, Laverne Parker, Officer David Houk, Officer David Estes, and the Appellant, Leland Gayles.

1.2 Proceedings.

1.2.1 By notice dated May 22, 1992, Police Officer Leland Gayles was discharged from his employment with the Seattle Police Department. The Commission received notice of discharge the same date. Officer Gayles timely filed his notice of appeal to the Commission on May 29, 1992 through his attorney, Allan Munro. The notice of appeal was received in the Commission office on June 1, 1992.

1.2.2 A pre-hearing conference was held on September 17, 1992. Hearings were held on September 21, 22, 24, 25 and October 7, 1992. Post-hearing briefs were filed at the Commission Office on October 19, 1992 by the Appellant and on October 20, 1992 by the City.

1.3 Summary of Positions.

1.3.1 Appellant. The Appellant, Leland Gayles, presented a defense of 1) mitigation (that is, the causes were not weighty enough to justify the extreme remedy of termination; 2) disparate treatment; and 3) harassment. To offer support of these defenses, Appellant made extensive offers of proof through the testimony of Marg Tomlinson, Officer K.C. Smith, Sgt. Kirby Leufroy, Frank LaChance, Connie Babcock, Sheryl Perry, Officer David Houk, Officer David Estes, and exhibits A-3, A-4, A-5, A-6, A-7, A-9, A-10, A-12, A-13, A-15, A-16, A-17, A-18, A-19, A-20 and A-21. In both I.I.S. cases 90-21 and 91-13, the Appellant argued that the City failed to show a preponderance of evidence that Gayles' infractions amounted to the kind of meaningful insubordination that is against the interests of the service, as opposed to a series of trivial oversights which are common to all

police officers at times in their careers. The Appellant admits, generally, engaging in the kind of conduct with which he was charged in I.I.S. files 91-13 and 90-21 although he argued the charges were blown out of proportion to the actual conduct.

1.3.2 Department. The Department asserts that the Chief of Police, Patrick Fitzsimons ("Chief"), acted in good faith in discharging the Appellant for Case 90-21: 1) Violation of Department Rules and Regulations (sick leave and limited duty assignment requirements; 2) Conduct Unbecoming an Officer (insubordination); and 3) Absence from Duty (violation of Department rules and regulations, sick leave and limited duty assignment requirements). The Department also asserts that the Chief acted in good faith in discharging the Appellant for Case 91-13: 1) Conduct Unbecoming an Officer and Failure to Obey Orders of a Superior. The Department argues that although Leland Gayles had been subject to progressive discipline in the past, he continued to ignore the orders of his superiors and other reasonable Department requirements. The Department maintains the termination of Leland Gayles was fully supported by evidence and testimony presented at the hearing and by the applicable law.

1.4 Commission. Having considered the extensive hearing record in this matter, including the credibility of the witnesses and exhibits presented to us, and the argument of the parties, the Commission enters the following Findings of Fact, Conclusions and Order.

II. FINDINGS OF FACT

A. FINDINGS APPLICABLE TO BOTH CASES

2.1 Department.

The Seattle Police Department is organized into four Bureaus: Administrative Services, Operations, Field Support and Investigations. The Patrol Division and the Communication Division are included in the Operations Bureau and Field Support Bureau respectively. There are four precinct stations: North, South, East and West.

Ranks within the Department include assistant chief, major, captain, lieutenant, sergeant and officer.

2.2 Commission.

The Commission derives its authority from Article XVI of the City Charter, and Chapter 4.08 of the Seattle Municipal Code.

2.3 Appellant.

Officer Gayles was first employed as a police officer on February 13, 1980 and has worked in the following units: West Precinct, Patrol South, Harbor Patrol and Communications.

B. SUMMARY OF TESTIMONY AND EVIDENCE

2.4 I.I.S. Case No. 90-21

2.4.1 Upon returning from sick leave on January 27, 1990, Officer Gayles failed to comply with the requirement that he produce a Medical Release for Work.

2.4.2 Despite repeated requests by his supervisors, Sgt. Beste and Lt. Taylor, and Police Personnel Director Aaron Dean, Officer Gayles failed to provide the required Medical Release for Work in a timely manner.

2.4.3 The medical information Officer Gayles produced on January 28, 1990, indicated he should be given light duty.

2.4.4 Despite repeated requests by his supervisors, Sgt. Beste, Lt. Taylor and Lt. Pryor, and Police Personnel Director Aaron Dean, Officer Gayles failed to meet the requirements for requesting a limited duty assignment in a timely manner.

2.4.5 On February 8, 1990, Officer Gayles was insubordinate to Lt. Taylor during a meeting in his office.

2.4.6 Officer Gayles reported to his office for temporary assignment on February 12, 1990; stated he refused to sign a memo requesting light duty because he did not want to work light duty. Officer Gayles felt he was being forced to make a decision to sign the request for light duty, so he chose to go home after Lt. Pryor told him, "If you won't sign, I'll have to send you home." Officer Gayles contends Lt. Pryor could have given him a regular duty assignment. Lt. Pryor admitted requesting light duty was discretionary with Officer Gayles.

2.4.7 Officer Gayles contends he was sent home because he did not have a medical release on the Department form designated for this purpose. After Officer Gayles submitted a medical release form from Chec Medical Center, he was disciplined because it was not on the proper form.

2.4.8 Officer Gayles contends he did not lose his patience until Lt. Taylor reviewed his alleged performance deficiencies, sick leave requirements and other unit-related concerns. Officer Gayles contends Lt. Taylor told him he was not wanted in the Harbor Unit.

2.4.9 On February 12, 1990, Officer Gayles was absent from duty upon leaving his assignment in the Operations Section without the permission and contrary to the direction of Lt. Pryor. In leaving as he did, Officer Gayles stopped further discussions between them and precluded his further assignment for work. Walking out on his superior officer effectively removed Officer Gayles from duty unless he was privileged to leave. A misunderstanding in a heated discussion did not show such a privilege.

C. DETERMINATION OF FACTS, I.I.S. CASE NO. 90-21

2.5.1 Officer Gayles violated Manual Section 1.08.030, (Violation of Department Rules and Regulations) in that: He reported to work from an extended illness (January 19, 1990 through January 25, 1990) without a signed medical release form in violation of Manual Section 1.07.080 (2) (b), and after obtaining the required medical release it contained specific limitations as a condition for return to work. Officer Gayles refused to comply with Manual Sections 1.08.030 and specifically 1.07.081 (3) (A) when requested to do so by Lieutenants Taylor and Pryor.

2.5.2 Officer Gayles violated Manual Section 1.08.010, (Conduct Unbecoming an Officer, Insubordination) in that: During a meeting with his sergeant and section commander to discuss work-related deficiencies, sick leave requirements, and other unit-related concerns, Officer Gayles "stood up, pointed his finger at the Lieutenant and said, "I don't have to take this 'crap'," and left the office even though he was ordered to stay.

2.5.3 Officer Gayles violated Manual Section 1.07.060, (Absence from Duty) in that: He was absent from duty on February 12, 1990 without one of the approved exceptions: sickness, injury, disability, approved day(s) off, or an authorized leave.

2.5.4 Chief Fitzsimons accepted the unanimous recommendation of Officer Gayles' chain of command that Gayles be terminated. However, he agreed to give Officer Gayles a "last chance" and placed the termination in abeyance pending no further similar complaints within one year from September 16, 1990.

D. SUMMARY OF TESTIMONY AND EVIDENCE

2.6 I.I.S. Case No. 91-13

2.6.1 On February 6, 1991, Officer Gayles was given a reasonable request to perform a routine task by Sgt. R.N. McDonald.

2.6.2 Officer Gayles responded by becoming loud, and physically demonstrative toward Sgt. McDonald.

2.6.3 Officer Gayles' tirade disrupted the Communications Center (the TRU unit) and raised concerns among employees that he would start a physical fight.

2.6.4 The tirade continued despite the efforts of Sgt. McDonald and Lt. Butler to calm Officer Gayles.

2.6.5 After Officer Gayles finally calmed down, he continued to adamantly refuse to obey the orders of both Sgt. McDonald and Lt. Butler to perform the routine task he had been assigned.

2.6.6 Officer Gayles admitted losing his temper and shouting at Sgt. McDonald. However, there were substantial inconsistencies between witnesses (Appellant and Department) over whether Officer Gayles raised his voice before he and Sgt. McDonald went into the Sergeant's office and there were inconsistencies on the length of the confrontation and the extent to which the confrontation disrupted the TRU Unit in the Communications Center. Officer Gayles justified his refusal because he had been disciplined in the Babcock case, No. 89-23 for doing follow-up work.

2.6.7 Chief Fitzsimons determined that Officer Gayles should be terminated because he had failed to positively respond to progressive discipline, including four prior suspensions and the termination (90-21) which had been placed in abeyance.

E. DETERMINATION OF FACTS, I.I.S. NO. 91-13

2.7 I.I.S. Case No. 91-13

2.7.1 Officer Gayles violated Manual Section 1.08.010 (Conduct Unbecoming an Officer, Insubordination) and 1.08.040 (Failure to Obey Orders of a Superior) of the Seattle Police Department in that: On February 6, 1991, Officer Gayles engaged in a loud, demonstrative verbal tirade that disrupted the Communications Center and repeatedly refused to provide additional information on an incident report he had prepared when asked to do so by Sgt. Robert McDonald and Lt. Steve Butler.

2.7.2 The actions of Officer Gayles constituted the acts of misconduct with which he was charged: Conduct Unbecoming an Officer (Insubordination) and Failure to Obey Orders of a Superior.

Good Faith. The Chief acted in good faith in discharging Officer Gayles for I.I.S. cases 90-21 and 91-13.

III. CONCLUSIONS OF LAW

Leland Gayles is a civil service employee with the rank of police officer. The Commission has jurisdiction over the subject matter of and the parties to this action.

The notice of discharge and appeal to this Commission were brought by the respective parties in a timely fashion.

Pursuant to City Charter Ordinance (SMC 4.08.100), the tenure of every person holding civil service employment shall be only during good behavior and acceptable performance. Officer Gayles may be removed or discharged only for cause. There is no need to consider other disparate treatment or harassment theories. This Commission has jurisdiction to determine the Appellant's discharge was in good faith, for cause and was not made for any arbitrary, capricious or illegal reason.

Leland Gayles engaged in repeated acts of misconduct specifically including acts of insubordination and failure to obey orders of his superiors.

Leland Gayles had been subjected to progressive discipline for his prior acts of misconduct and was given different assignments in an attempt to correct his behavior.

Progressive discipline and changes in assignments failed to correct Leland Gayles' pattern of misconduct.

The decision of the Chief was made in good faith, supported by substantial evidence and reasonably believed by the employer to be true.

Based on the independent determination of the Commission, there was good cause for the discharge of Officer Gayles.

IV. ORDER

The order of discharge in this matter is affirmed.

Any appeal from this decision shall be taken in the manner prescribed by law.

Signed at Seattle, Washington on November 5, 1992.

PUBLIC SAFETY CIVIL SERVICE COMMISSION
OF THE CITY OF SEATTLE



Barbara Laners, Chair



Jason King, Commissioner



Steve Brown, Pro Tem Commissioner