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Court of appeal finds county violated employee's POBR rights

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The County of Fresno terminated a correctional officer for misconduct. During the disciplinary proceedings, the county relied on an Internal Affairs (IA) report that included interview transcripts and other documents. The officer challenged his dismissal, arguing that by refusing him access to the report's attachments, the county violated his statutory rights. The trial court affirmed his dismissal, and the officer appealed. In a partially published opinion, the California Court of Appeal reversed and sent the matter back to the trial court.

County correctional officer challenges dismissal

James Davis was a supervising juvenile correctional officer for the County of Fresno. In August 2012, colleague Lonny Blue filed a retaliation complaint against Davis. On September 12, 2012, the county investigator completed a 20-page memorandum addressing Blue's complaint that included incident reports, transcripts of interviews with officers, and e-mails as attachments. The memo stated: "This investigation involved the review of numerous documents (each Tabbed for reference), and personal interviews (each transcribed and Tabbed for reference). Witness/interviewee statements are summarized below[.] however, it is suggested the full transcript be read for a complete review of the interview."

In October 2012, Davis' supervisor caught him submitting false time sheets. In December, while he was on duty and logged on to the watch commander's computer, Davis completed a time sheet for his wife, who is also a juvenile correctional officer, in violation of the department's nepotism policy. The county placed Davis on administrative leave and initiated an IA investigation.

The final IA report, which included the September 2012 memo, among other documents, stated that Davis violated (1) county personnel rules, (2) probation department administrative policies, and (3) a county management directive on time sheets. The county notified Davis that it intended to institute disciplinary proceedings against him. Prior to the proceedings, the county gave him the IA report and the September 2012 memo but attached only his interview transcript and a copy of the proposed disciplinary order. The county didn't give Davis the incident reports or any of the other officer interview transcripts that had been attached to the September 2012 memo.

Following a *Skelly* hearing, at which he had due-process rights, including access to the materials upon which his discipline was based, Davis was terminated. After the county's Civil Service Commission affirmed his dismissal, he asked the superior court to set aside the decision, arguing the county's failure to produce all the attachments to the IA report violated his procedural due-process rights and the Public Safety Officers Procedural Bill of Rights Act (POBR). The superior court denied his request, and he appealed.

County violated POBR

The POBR requires public entities to provide basic rights and protections to all "public safety officers." Those rights include limits on and guidelines for investigations and interrogations in connection with disciplinary proceedings as well as the right to an administrative appeal. The POBR mandates that "when any public safety officer is under investigation and subjected to interrogation by his or her" employer in a matter that

could result in discipline, the officer "shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential."

On appeal, Davis contended that the county violated the POBR by failing to produce a complete copy of the IA report, including all the attachments to the September 2012 memo. Because his dismissal was based, at least in part, on Blue's complaint, he argued that the entire September 2012 memo, including the attachments, was highly relevant to the disciplinary hearing. He suspected that he could have used certain documents attached to the memo to diminish Blue's credibility. The court of appeal agreed.

The September 2012 memo was a summary of the investigation into Blue's complaint of retaliation, which was ultimately delivered to the chief probation officer. It therefore fell within the definition of "report" for purposes of the POBR. The memo contained summaries of witness statements but "suggested the full transcript be read for a complete review of the interview." Thus, the investigator believed the attachments were useful to a full understanding of the report's findings.

Finally, providing Davis copies of the attachments would help ensure the integrity of the IA report by subjecting it to greater scrutiny. Readers would be able to confirm whether information in the source documents was accurately described in the IA report, thus furthering the POBR's purpose of promoting stability, integrity, and public confidence in law enforcement. Under the circumstances, the court deemed the memo attachments to be a part of the IA report for purposes of the POBR; therefore, Davis should have received copies in advance of his administrative hearings.

Trial court in best position to fashion remedy

The parties disagreed about the most appropriate remedy for the county's violation of the POBR. Davis demanded reinstatement with back pay. The county argued that he had a full and fair opportunity to present his defense, and even in the absence of its POBR violation, the disciplinary outcome would have been the same.

The POBR grants courts broad discretion to fashion equitable remedies to redress and deter violations on a case-by-case basis. Here, the court of appeal acknowledged that it did not have access to the documents that were withheld from Davis, and it therefore could not assess the impact their disclosure might have had on the administrative proceedings.

The court concluded that it would be best for the county to provide the missing documents to Davis, permitting the parties to present arguments about their

impact. That would allow the trial court to determine the relief, if any, that would most appropriately remedy the county's POBR violation and deter future violations. *Davis v. County of Fresno* (California Court of Appeal, 5th Appellate District, 5/3/18).

Bottom line

Civil service employees benefit from extensive procedural safeguards that restrict their public employer's ability to impose discipline. In this case, the POBR guaranteed that a correctional officer be given the opportunity to examine records used as a basis for his dismissal in advance of his administrative hearings. By failing to disclose that material, the county opened the door for delay and inefficiency in what otherwise appeared to be a straightforward termination. This case is a reminder that even if the facts are on your side, you must carefully follow procedures so your disciplinary actions remain effective.

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