

MAP wins legal defense case for Northern Illinois University officer!

Another long, hard fought battle on behalf of our members results in getting an officer's job back.

There have been a few instances where officers have been fired for "specious" reasons but this particular case takes the cake!

It is a result of power happy leaders. Or is it vindictive people, or maybe it's my way or the highway people. It is the reason why *you need a union or legal back up!*

In brief, a chief at NIU made a verbal order that there will be no overtime that was given "sometime" in 2008. In November of 2008, the officer involved submitted a request to be paid for 2 ½ hours beyond his regular hours.

The chief neither put this order in writing, nor did the officer ask for overtime.

Getting the picture? And oh, yes, it took six months to discipline the officer. While the officer signed a "last chance" agreement earlier on different issues, the hearing officer found that none of the current charges obviously were going to apply.

Well, we will let you read it for yourself. This case was argued and won by MAP attorney Ron Cicinelli.

STATE UNIVERSITIES CIVIL SERVICE SYSTEM

Sunnycrest Center
1717 Philo Road, Suite 24
Urbana, Illinois 61802-6099



Joanne E. Maitland
Merit Board Chair
Lewis T. (Tom) Morelock
Executive Director

October 20, 2010

Mr. Ronald N. Cicinelli
Law Office R. Cicinelli
17W300 22nd Street, Suite 220
Oakbrook Terrace, IL 60181

RE: Notice of Certification of Hearing Record, in the cause of Michael Rettig v. Northern Illinois University (NIU-10-1)

Dear Mr. Cicinelli:

Enclosed is the Certification of Hearing Record in the above-referenced case.

Also enclosed with this letter is a copy of the Findings of Fact, rendered by the Hearing Officer, and a copy of the Exhibits. The Transcript of Evidence was provided to you earlier. The entire Hearing Record is available for review at 1717 Philo Road, Suite 24, Urbana, Illinois, 61802-6099. Copies of other portions of the Hearing Record are available upon request.

Any objections to the form or contents of the Hearing Record, briefs, abstracts, or excerpts from the Hearing Record, any arguments, motions, or recommendations relating to the proceedings of the Hearing Record, or requests for further hearing or permission to supplement the Hearing Record by other evidence must be filed with the Secretary for the Merit Board within **14 calendar days from the date of the postmark of the Notice of Certification of Hearing Record, with proof of service thereon on all parties.**

Answer or reply briefs and arguments are not permitted unless expressly authorized by the Merit Board or its Chair.

Personal appearances before the Merit Board must be filed with an appropriate motion with the Secretary for the Merit Board with notice to opposing party at least fourteen (14) days prior to the Merit Board's meeting wherein the case will be considered. The motion will be ruled on by the Merit Board at the Merit Board meeting in which the case is being considered. The next meeting of the University Civil Service Merit Board is scheduled for Wednesday, November 17, 2010.

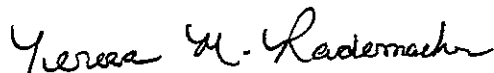
October 20, 2010 – page 2

Any of the above-mentioned objections, materials, or requests should be filed with the Secretary for the Merit Board at the address on this letterhead.

After the 14-day period noted above, the Hearing Record and all materials, objections, requests, etc., that have been filed with the Secretary for the Merit Board will be transmitted to the Merit Board for its review and action. You will be sent a copy of the Merit Board Decision and Order.

Please call me at 217.278.3150, ext. 229 if you have any questions about the above procedures.

Sincerely,

A handwritten signature in cursive script that reads "Teresa M. Rademacher".

Teresa M. Rademacher
Secretary for the Merit Board

Encs. Certification of Hearing Record)
Exhibits)
Findings of Fact by Hearing Officer)

Federal Express No. 8714 6846 4725

STATE OF ILLINOIS



STATE UNIVERSITIES CIVIL SERVICE SYSTEM

| | | |
|--------------------------------------|---|------------------------------------|
| MICHAEL RETTIG, |) | BEFORE THE UNIVERSITY CIVIL |
| |) | SERVICE MERIT BOARD |
| Employee-Petitioner, |) | |
| |) | DISCHARGE PROCEEDING |
| v. |) | |
| |) | No. NIU-10-1 |
| NORTHERN ILLINOIS UNIVERSITY, |) | |
| |) | |
| Employer-Respondent. |) | |

CERTIFICATION OF HEARING RECORD

Lewis T. (Tom) Morelock, Executive Director, hereby certifies the Hearing Record in the above captioned cause, and consists of the following:

- Written Charges for Discharge
- Notice of the June 21, 2010 remand order of the Circuit Court of DeKalb to the Employee-Petitioner
- Notice of Hearing to Hearing Officer
- Notice of Convening of Hearing to the Employer's Attorney of Record, Employer, Employee's Attorney of Record, and Employee
- Notice of Appearance for Employer-Respondent
- Employer-Respondent's List of Witnesses and Exhibits
- Witness List for Employee-Petitioner and Exhibits and Stipulations
- Notice of Protocols to parties of record

- Transcript of Evidence and Exhibits
- Post-Hearing Brief of Petitioner Michael Rettig, filed by Ronald N. Cicinelli, Attorney for Employee-Petitioner
- Employer's Post-Hearing Brief, filed by Mark W. Bennett, Attorney for Employer-Respondent
- Hearing Officer's request for Findings of Fact
- Findings of Fact, rendered by the Hearing Officer

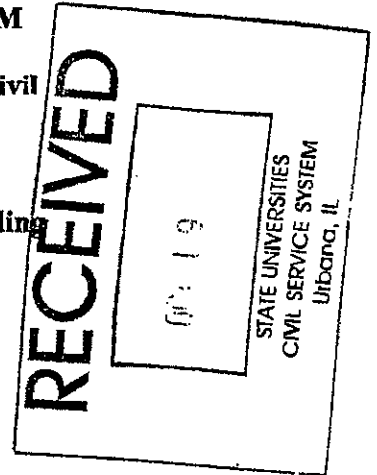
and which is attached hereto.

Signed:  Executive Director

Date: October 20, 2010

**STATE OF ILLINOIS
STATE UNIVERSITIES CIVIL SERVICE SYSTEM**

| | | |
|-------------------------------------|---|------------------------------------|
| Michael RETTIG |) | Before the University Civil |
| |) | Service Merit Board |
| Employee – Petitioner |) | |
| |) | |
| vs. |) | Discharge Proceedings |
| |) | |
| Northern Illinois University |) | NIU-10-1 |
| |) | |
| Employer – Respondent |) | |



FINDINGS OF FACT

Appearances

On September 20, 2010, the above-entitled cause was heard before the undersigned Hearing Officer, Brian Clauss. Employee – Petitioner (“Employee”) was represented by Mr. Ronald Cicinelli, Law Offices of Ronald Cicinelli, Elmhurst, Employer – Respondent (“Employer”) was represented by Mr. Mark Bennett, Laner Muchin Dombrow Becker Levin and Tominberg, Ltd, Chicago.

Statement of the Case

In accordance with section 250.110(e) (2) (A) of the Illinois Administrative Code (80 Ill. Adm. Code section 250.110(e) (2) (A)), the Employer served the Employee with Written Charges for Discharge. The Employee made a timely written request for hearing and that hearing was properly convened. The Charges alleged the grounds for Discharge:

1. Code of Ethics, Department Policy 14.1, paragraph (2) which states in part: “ I will be exemplary in obeying the law and regulations of my department.”
2. Disobedience or violation of any department rules, regulations, orders, instruction or memorandum
3. Insubordination
4. Disobedience of a lawful order

Background

On September 4, 2008, the parties appeared for a State Universities Civil Service System for termination of Petitioner in another matter. The parties did not proceed to hearing and instead entered into a Last Chance Agreement. That Last Chance Agreement is relevant to the instant matter because Petitioner was dismissed pursuant to that Last Chance Agreement. The Last Chance Agreement provided, in pertinent part, that Petitioner would be administratively separated for job abandonment or voluntarily resign if he committed a major infraction within 24 months of the execution of the Agreement.

The Agreement further stated that the determination of a major infraction would be determined by the Chief in consultation with University Counsel.

The written charges were filed pursuant to an order entered by the Circuit Court of DeKalb County on June 21, 2010, requiring the Employer to allow Merit Board review of Petitioner's termination.

In the instant matter, the Petitioner was employed as a Police Officer. He returned to work on or about September 4, 2008 following execution of a Last Chance Agreement and was assigned to an Illinois State Police administered Drug Enforcement Task Force. ("Task Force")

The Task Force is organized and administered by the Illinois State Police and is comprised of members of local police departments who assign officers to the Task Force. Northern Illinois University Police Department is one of the Departments that contributes police officers to the task Force. Officer Muszinski was also assigned to the Task Force.

Chief Grady and a Sergeant testified about an overtime order that was given some time in 2008. The Chief ordered that there could be no overtime worked without prior approval. The order was verbal and was never reduced to writing by the Chief or the command staff.

In November 2008, Grievant submitted a request for pay for a total of 2½ hours beyond his regular hours. Grievant did not request to be paid overtime. These additional hours were incurred over a period of four days in November 2008 days while Petitioner and Officer Muszinski were attending an in-service Task Force training. The Sergeant submitted a "Request for Discipline" on or about December 3, 2008 against Petitioner for violating the overtime order.

On or about May 5, 2009, the Chief determined that Petitioner had committed a major infraction of the Last Chance Agreement by working overtime despite the overtime approval order.

Review of the Specific Charges that the Employee violated the Code of Ethics, Department Policy 14.1, paragraph (2) which states in part: " I will be exemplary in obeying the law and regulations of my department," disobeyed or violated of any department rules, regulations, orders, instruction or memorandum, was insubordinate, or disobeyed a lawful order

Summary of Testimony, Evidence and Stipulations Common to All Charges

The facts that gave rise to the Charges involve the Employee's position as a Police Officer. The charges are interrelated. Accordingly, the analysis is interrelated below.

In Charge 1, the Employer alleges that the Employee Code of Ethics, Department Policy 14.1, paragraph (2) which states in part: " I will be exemplary in obeying the law and regulations of my department." This charge was not proved.

Independent, corroborated testimony from the witnesses, as well as the Employee's testimony at the hearing, established that the Employee did not perform any acts which would indicate that the Employee was anything less than exemplary in obeying the law and regulations. The verbal order at issue was not written and vague in how it should be applied. Accordingly, Charge 1 was not proved.

In Charge 2, the Employer alleges that the Employee engaged in disobedience or violation of any department rule, regulation, order, instruction or memorandum.

Independent, corroborated testimony from the witnesses, as well as the Employee's testimony at the hearing, established that the Employee was not disobedient or violated any orders. The Employee was assigned to a State Police Task Force. One of the Master Sergeant supervisors at the State Police testified that Petitioner was a member of the Task Force and was required to attend an in-service training on narcotics counterterrorism. The training was arranged by the State Police and attendance was required of all Task Force members. The evidence showed that the training was a mandatory in-service training that ran slightly long on four of the five days

Chief Grady's verbal order was simply "no working overtime without approval" and was obviously unwritten and vague. There was no guidance in that verbal order to an employee like the instant employee who was at the mandatory training when it ran unexpectedly long.

Moreover, if the violation were as serious as maintained by the Employer, then it begs the question of why six months elapsed between the alleged violation and the discipline of Petitioner. Even if the unwritten verbal order was not vague, the Employer's explanation for the delay is unconvincing. Accordingly, Charge 2 was not proved.

In Charge 3, the Employer alleges that the Employee engaged in insubordination when he worked beyond the end of his shift.

As stated above, the order was a vague verbal order, the employees had no guidance under such a vague order in a situation like that confronting Petitioner, and the supposed seriousness of the alleged misconduct is negated by the delay in imposing discipline. Accordingly, Charge 3 was not proved.

In Charge 4, the Employer alleges that the Employee disobeyed a lawful order.

As stated above, the order was a vague verbal order, the employees had no guidance under such a vague order in situation like that confronting Petitioner, and the supposed seriousness of the alleged misconduct is negated by the delay in imposing discipline. Accordingly, Charge 4 was not proved.

As part of his defense theory, the Petitioner alleges a number of improper motivations for the discipline and cites the delay in imposing discipline as one of the facts in support of the defense. Because the Employer had not proved the charges, the defense is not reached.

Conclusion of Facts for the Charges that the Employee violated the Code of Ethics, Department Policy 14.1, paragraph (2) which states in part: " I will be exemplary in obeying the law and regulations of my department," disobeyed or violated of any department rules, regulations, orders, instruction or memorandum, was insubordinate, or disobeyed a lawful order

After careful consideration of all the evidence in the instant matter, the undersigned Hearing Officer concludes the following:

The Employer has not sustained the burden of proof for the charge that the Employee violated the Code of Ethics.

The Employer has not sustained the burden of proof for the charge that the Employee engaged in disobedience or violation of any department rules, regulations, orders, instruction or memorandum.

The Employer has not sustained the burden of proof for the charge that the Employee engaged in insubordination when he worked beyond the end of his shift.

The Employer has not sustained the burden of proof for the charge that the Employee disobeyed a lawful order.

BY: Brian Clauss
Hearing Officer
State Universities Civil Service System
University Civil Service Merit Board

Issued: October 15, 2010


Brian Clauss