

JEREMY M. HASKE,

Plaintiff,

vs.

Case No. 10-CV-234

JUNEAU COUNTY BOARD OF SUPERVISORS,  
JUNEAU COUNTY SHERIFF, and  
JAIL GRIEVANCE COMMITTEE,

Defendant.

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**APPEAL FROM THE MEMORANDUM DECISION AND ORDER OF THE AD HOC  
JUNEAU COUNTY SHERIFF AND GRIEVANCE COMMITTEE**

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On January 23, 2009, pursuant to Wis. Stats. § 59.26(8)(b), Juneau County Sheriff Brent H. Oleson filed a formal complaint with the Committee entitled "In the Matter of Disciplinary Proceedings against Jeremy Haske, Deputy sheriff Juneau County." [Hearing Ex. 2]. The Sheriff sought to terminate the employment of former Lieutenant Jeremy M. Haske and set forth five charges. Two of the charges were withdrawn without prejudice being charges one and five leaving the following three charges:

Charge I (Charge 2 of the Complaint): Improper handling of evidence, conducting an unauthorized investigation, releasing information contrary to departmental policy and insubordination arising out of Haske's failure to timely report what he perceived as sexual harassment by then Undersheriff Weger and unilateral and unauthorized investigation and nonconsensual tape recording of dispatcher Lisa Lutz [Hearings Ex. 2, pp. 5-6].

Charge II (Charge 3 of the Complaint): Haske's failure to report inappropriate activity: specifically, failure to report Shirley French Czys' disabling of her department phone and non-consensual removal of a part of the phone recording equipment to her home [Hearing Ex. 2, pp.6-7].

Charge III (Charge 4 of the complaint): Haske's inappropriate relationship with minor Jenny Doe [Hearing Ex. 2, pp. 7-9].

An evidentiary hearing was held before the Juneau County Sheriff and Jail Grievance Committee at Haske's request. The Committee conducted proceedings that

lasted at least for parts of twelve days. The Committee made a decision based on the evidence presented before it and found three independent grounds justifying Haske's termination, including perjury to the Committee as a ground over and above those stated by the Sheriff in his complaint [6/1/10 Decision, p. 18-19]. The Committee further found one ground justifying demotion, and also ordered Haske to pay all pay and benefits received by him between the time of his suspension and the date of the decision [6/1/10 Decision, p. 18-19]. The Committee specifically issued the following findings of fact and conclusions of law:

1. As to Charge I, there is just cause within the meaning of Wis. Stats. §59.26(8) (b) 5m. to sustain the charge and the Charge is well-founded within the meaning of Wis. Stats. §59.26(8) (b) 5. On the basis of Charge I, it is requisite and proper that Lieutenant Haske should be discharged.
2. As to Charge II, there is just cause within the meaning of Wis. Stat. §59.26(8) (b) 5m to sustain the charge, and the Charge is well-founded within the meaning of Wis. Stats. §59.26(8) (b) 5. On the basis of Charge II, it is requisite and proper that Lieutenant Haske should be demoted.
3. As to Charge III, there is just cause within the meaning of Wis. Stat. §59.26(8) (b) 5m. to sustain the charge, and the Charge is well-founded within the meaning of Wis. Stat. §59.26(8) (b) 5. On the basis of Charge III, it is requisite and proper that Lieutenant Haske should be discharged.
4. On the basis of the fact that Lieutenant Haske lied under oath to this Committee, it is requisite and proper that he should be discharged.
5. Lieutenant Haske's employment with the Juneau County Sheriff's Department shall be and hereby is terminated, effective as of the date of his original suspension with pay on August 7, 2008. Pursuant to Wis. Stats. §59.26(9) (c), all pay and benefits received by Haske between the time of his suspension and today's date shall be returned to Juneau County forthwith.

Pursuant to the Court's scheduling order dated June 25, 2010, the Court received and reviewed the brief of Attorney Shawn M. Paul on behalf of Lieutenant Jeremy Haske, the brief of Sheriff Brent H. Oleson filed in response by Attorney Michelle M. Ford, the response brief of the Juneau County Board of Supervisors filed by Attorney David E.

Lasker, Juneau County Corporation counsel and the rebuttal letter brief filed by Attorney Shawn M. Paul on behalf of Lieutenant Jeremy Haske.

The Court also had benefit of hearing transcripts of the proceedings before the ad hoc Juneau County Sheriff and Jail Grievance Committee together with all exhibits that were considered by the Committee.

The Appeal before the Court by Lieutenant Haske by the Memorandum Decision and Order of the ad hoc Juneau County Sheriff and Jail Grievance Committee, entered June 1, 2010, is made pursuant to Wis. Stats. § 59.26 (8) (b) 6. The Court finds that the standard of review is set forth in the statute as follows:

6. \*\*\* The question to be determined by the court shall be: "Upon the evidence is there just cause, as described under subd. 5m., to sustain the charges against the accused?"

This Court must determine on review whether the evidence adduced at the hearing before the Committee was sufficient to support the Committee's findings of fact and conclusions of law. Section 59.26(8) (b) 6 states that "If the order of the committee is reversed, the accused shall be reinstated and entitled to pay as though in continuous service. If the order of the committee is sustained it shall be final and conclusive."

The Court further finds that this Court may not replace its judgment for that of a Committee who listened to twelve days of proceedings. The Committee was composed of the chair person of the County Board and two other senior members of the Board, all of whom were very knowledgeable about the Sheriff's Department and its functioning. It is clear that they listened to twelve days of testimony, considered all of the exhibits received into evidence, and were able to evaluate the charges and their overall significance where the question of termination or other discipline is concerned. This Committee by statute is of course subject to review by a court of law in order to insure that the actions of the



Committee are not arbitrary or capricious or otherwise without basis in fact and reason. The case at bar presents on appeal a case similar to Edward Kraemer & Sons, Inc. v. Sauk County Board of Adjustment, 183 Wis.2d 1, 515 N.W.2d 256 (1994) (judicial review of county board of adjustment's denial of an application for special exception, applying the common law certiorari standard of review). In Kraemer & Sons, the supreme court said:

Depending on what facet of the Board's action is being challenged, common law certiorari review requires us to consider one or more of the following: "(1) whether the Board kept within its jurisdiction; (2) whether it proceeded on a correct theory of law; (3) whether its action was arbitrary, oppressive or unreasonable and represented its will and not its judgment; and (4) whether the evidence was such that it might reasonably make the order or determination in question."

In the case at bar, these same considerations are appropriate in determining whether, under the factors enumerated in §59.26(8) (b) 5m., there is just cause for termination of Lieutenant Haske's employment.

In Sierra Club v. Wisconsin Dep't of Natural Resources, 2010 WI App 89, ¶ 25, 2010 WL 2519621 (Wis. App. June 24, 2010), the court of appeals, quoting the supreme court decision in Hilton v. DNR, 2006 WI 84, ¶ 16, 293 Wis.2d 1, 717 N.W.2d 166, defined this standard as follows:

Substantial evidence is evidence which, "after considering all the evidence of record, reasonable minds could arrive at the same conclusion." Accordingly, we will uphold the agency's findings if they are supported by credible and substantial evidence. We may not substitute our judgment for the agency's judgment regarding the weight of the evidence.

In Cogswell v. Robertshaw Controls Co., 87 Wis.2d 243, 250, 274 N.W.2d 647 (1979), "When more than one reasonable inference can be drawn from the credible evidence, the reviewing court must accept the inference drawn by the trier of fact." In Wisconsin Professional Police Ass'n v. Public Service Commission, 205 Wis. 2d 60, 67,

555 N.W.2d 179 (Ct. App. 1996), the court explained the substantial evidence test as follows:

Substantial evidence does not mean a preponderance of the evidence. Rather, the substantial evidence test is satisfied when reasonable minds could arrive at the same conclusion as the commission when taking into account all evidence in the record... We will set aside the commission's findings only if a reasonable person could not have made the findings from the evidence.

The Court also discussed the test to be applied when reviewing an agency's discretionary decision, stating that:

We may not substitute our judgment for that of the commission on an issue of discretion; rather, we review the commission's decision to determine whether it is arbitrary or capricious. Arbitrary or capricious conduct lacks a rational basis and is the result of an unconsidered, willful or irrational choice rather than a "sifting and winnowing" process.

The Court finds that all of these standards are applicable to this case at bar.

The Court finds based upon the evidence presented at the hearings before the Committee, the briefs and argument of counsel, the entire transcript provided to the Court and the statutory and case law that the Committee findings are supported by credible and substantial evidence, and the Court orders that they are upheld.

Lieutenant Haske argues that the Committee failed to consider all the evidence and ignored the view of the facts asserted by him as true. The Court finds that what is legally significant on this appeal is whether or not the substantive findings of the Committee were supported by credible and substantial evidence in the record and the Court does make that finding. There is nothing in the record that would disclose that the Committee did not consider all of the evidence brought forth by Lieutenant Haske including his personnel records which had positive contents and the bright spots in his career in the Sheriff's Department. The Committee determined that this positive evidence was outweighed by evidence of wrong doing that was most relevant to the question of

whether he is fit to continue as an employee. The constant theme running through Lieutenant Haske's theory of the case was how Lieutenant Haske characterized his own behavior, the behavior of the Sheriff and other members of the department's senior staff, the nature of the investigations, the motives of the critical actors on the case, the discipline of other employees in the department, and the credibility of the various witnesses. These arguments were made during the hearing and in the Lieutenant's brief filed with the Court. It is apparent to the Court that the Committee viewed things differently than did Lieutenant Haske and his legal counsel and they did not agree with his theory of the case. The Committee certainly heard a lot of evidence regarding the Sheriff's performance, but the Sheriff's performance was really not the issue before the Committee or before the Court. It is clear that the Committee as was its prerogative to do so, declined to accept Lieutenant Haske's theory.

With regard to whether there was credible and sufficient evidence as to each of the charges, with regard to Charge I, the Committee concluded that the greater weight of the credible and substantial evidence showed that Lieutenant Haske ignored his responsibility to promptly report his observations to his superiors or the Sheriff and took matters into his own hands contrary to existing policy and procedure. Lieutenant Haske was a long time employee and based upon his background and experience should have known that he was failing to fulfill his duty to the department. Both parties set forth evidence about whether or not Ms. Lutz believed or did not believe that she was a victim of an assault by Deputy Weger. Again both parties set forth their evidence before the Committee and the Committee did not adopt Lieutenant Haske's theory of the facts. The Committee certainly could have adopted as they did the testimony of Ms. Lutz that she did not feel sexually harassed in any way, shape, or form, absolutely not [Volume II, pg. 446]. The Court



finds that there was substantial evidence in the record which based upon the greater weight of the credible and substantial evidence that the Committee could have found as they did that there was credible and sufficient evidence as to Charge I.

With regard to Charge II, once again the Court heard testimony regarding this allegation. Lieutenant Haske argues that he did not have a duty to report the inappropriate activity by Ms. French-Czys. The Committee found based upon all the evidence that he did have a duty of loyalty to the Sheriff. The Committee found that Lieutenant Haske admitted that he did not tell the Sheriff when he learned of her taking it (Transcript at 85, 88), the Committee further found that Lieutenant Haske acknowledged that he knew and even administered departmental personnel policies, and he admitted that he failed to inform the Sheriff as required (Transcript at 58, 87-88; 608; Ex. 1 at 27). In Lieutenant Haske's brief he alleges that the Committee misread the testimony regarding his duty to inform the Sheriff about the power supply cord and the complaint made to the Mauston Police Department. He argues that the Committee completely ignored his testimony and created their own version of the testimony to fit their purposes demonstrating favoritism toward the Sheriff and bias against Lieutenant Haske.

Once again, the Committee found based upon the testimony that Lieutenant Haske owed it to the Sheriff to be forthcoming at the very time he intentionally chose to keep a secret. The Committee found that there were no truly compatible disciplinary cases in the department to measure against Lieutenant Haske's wrongdoing as argued by Lieutenant Haske. The Court finds once again that the Committee was reasonable in concluding that Lieutenant Haske's wrongdoing merited a demotion. The Court finds that there was credible and sufficient evidence as to Charge II.

With regard to Charge III, the Committee concluded with regard to the relationship between Lieutenant Haske and the high school girl identified as Jenny Doe that Lieutenant Haske based upon ample credible and substantive evidence that Lieutenant Haske had an inappropriate romantic relationship with a seventeen year old for approximately three months in 2000, that Jenny Doe testified as to that romantic relationship and having sexual intercourse with Lieutenant Haske at least on one occasion in her family home, she further testified regarding hugging, kissing, and groping on top of her clothes occurring in vehicles while Lieutenant Haske was on duty, that Lieutenant Haske told her not to say anything about it and to deny there was a relationship especially a sexual relationship, that Lieutenant Haske told her to say they were "just friends" and to deny anything beyond a simple friendship. The Committee heard testimony from a friend who said she observed the romance between Lieutenant Haske and Jenny on numerous occasions over a period of at least three months, saw them kissing on the lips including kissing on the couch in the living room of Jenny's family home, which she described as "lover's kisses," "romantic kisses," and intimate kissing "leading toward sexual intercourse." The Committee found all of the facts to be credible.

Lieutenant Haske argues that the Department of Criminal Investigation agent's report contradicts the testimony of Jenny and Dana. Lieutenant Haske argues that Jenny was telling the Sheriff the truth in 2000 contra to her testimony now that she lied because Lieutenant Haske encouraged her to do so and that she was afraid that Lieutenant Haske would lose his job if she confessed the true nature of their relationship [Volume II, pg. 355].

Once again the Committee determined after hearing all the evidence in considering the credibility of the witnesses that the testimony of Jenny and Dana was



more credible than that of Lieutenant Haske. The Court finds based upon all of the evidence and exhibits before the Committee that there was credible and sufficient evidence as to Charge III. There certainly was substantial credible evidence which would support the findings and conclusions of the Committee with regard to the relationship between Lieutenant Haske and the high school girl identified as Jenny Doe. The Committee actually found the testimony of Lieutenant Haske and some of the witnesses in support of his testimony to lack credibility all together. The Court finds after considering all the argument and evidence on the record that the Findings of Fact, Conclusions of Law reached by the Committee as to Charge III was supported by substantial credible evidence.

The Committee concluded that Lieutenant Haske's intentional and deliberate falsification under oath before the Committee was by itself grounds to terminate his employment. The Committee argues that the situation presented by Lieutenant Haske's apparent perjury is analogous to when a person engaged in contemptuous behavior in a court of law. Citing Wis. Stats. §785.03(2). The tribunal has inherent power to redress a wrong committed in its presence. See, eg. Jacobson v. Avestruz, 81 Wis. 2d 240, 247 260 N.W.2d 267 (1977), in which the supreme court said,

It is clear that this court has characterized the inherent power of courts as possessing two primary features: (1) the power must be such that it is related to the existence of the court and to the orderly and efficient exercise of its jurisdiction, and (2) the power must not extend the jurisdiction of the court nor abridge or negate those constitutional rights reserved to individuals.

The Committee found that it's decision to terminate Lieutenant Haske on the grounds of his lying under oath before the Committee was related to the orderly exercise of its jurisdiction and was not an extension of it. The Court finds that this Committee finding was not proper. The Committee was certainly within its authority once it believed

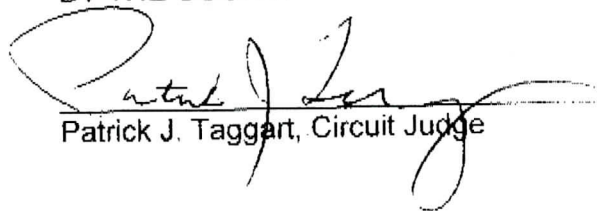
that Lieutenant Haske was lying to discount his testimony when considering his credibility. If the Committee believed that Lieutenant Haske lied under oath, the Committee's remedy would be the same as this Court's remedy if the Court believes someone has perjured himself, which would be to refer the matter to the District Attorney for consideration of prosecution.

This Court finds that the use of the Committee's determination to find grounds to terminate Lieutenant Haske on the grounds of his lying under oath was not proper.

Based upon the Court's findings, the Court sustains and affirms the memorandum decision and order of the ad hoc Sheriff and Jail Grievance Committee and terminates the employment of Jeremy M. Haske as of the date of his original suspension with pay on August 7, 2008, with the exception of uncharged ground 4.

Dated this 16<sup>th</sup> day of November 2010.

BY THE COURT:

  
Patrick J. Taggart, Circuit Judge

C: Atty. Shawn Mutter  
Atty. David Lasker  
Atty. Michele Ford