

**BOARD OF FIRE AND POLICE COMMISSIONERS
OF THE CITY OF MILWAUKEE**

**In the Matter of the Appeal of Christine A. Hackbarth
MPD Personnel Order 2013-106**

Hearing Date: May 28, 2014

Hearing Location: 809 North Broadway, First Floor Boardroom
Milwaukee, Wisconsin

Commissioners: Marisabel Cabrera
Steven M. DeVougas
Michael M. O'Hear

Hearing Examiner: Michael M. O'Hear

Appearances: Adam B. Stephens, Assistant City Attorney
For the Milwaukee Police Department

Attorney Christopher J. MacGillis
For Appellant Christine A. Hackbarth

PROCEDURAL HISTORY

The Chief of Police, Edward A. Flynn, charged Office Assistant III Christine A. Hackbarth in Personnel Order 2013-106 dated December 3, 2013, with the following violation of Milwaukee Police Department Rules and Procedures, for which she was discharged:

Core Value 3.00 – Integrity, referencing Guiding Principle 3.01: Engaging in a pattern of behaviors that created an appearance of impropriety.

Hackbarth, the Appellant in this matter, filed an appeal with the Milwaukee Fire and Police Commission from the order of the Chief of Police and a hearing was held.

SUMMARY OF HEARING PROCEEDINGS

The hearing was conducted on May 28, 2014. The hearing was recorded by a stenographic reporter. Testimony was taken from the following witnesses:

For the Chief of Police: Sergeant Kurt Drezek, Milwaukee Police Department
 Sergeant Willie Murphy, Milwaukee Police Department
 Lieutenant Johnny Sgrignuoli, Milwaukee Police Department

For the Appellant: Christine A. Hackbarth

Based upon the evidence received at the hearing, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. At the time of her discharge, Appellant Christine A. Hackbarth (“Hackbarth”) had worked for the Milwaukee Police Department for about ten years. Her work assignment was in the Department’s Court Administration Section (“CAS”), where her responsibilities included providing administrative support for police officers going to court to testify. Among other things, she helped to ensure the completeness and accuracy of the Department’s overtime records for testifying officers. This was a significant and demanding responsibility; testimony at the hearing indicated that Hackbarth was responsible for handling about 800 to 900 overtime cards in a typical two-week pay period.
2. Hackbarth’s work evaluations were consistently very positive. (*See Exhibits 14 and 16.*) Her most recent supervisor, Sergeant Willie Murphy (“Murphy”), testified at the hearing that Hackbarth was “conscientious” and a “stellar employee.” In his written evaluations, he characterized her as a “huge asset to Court Administration” and noted that she “has probably realistically saved the Department many thousands of dollars just in her ability to spot oversights in the online timecards submitted by Department members.” (*Ex. 14.*)
3. The CAS has experienced a number of management difficulties in recent years. In 2012, several sworn officers working in the CAS were disciplined for submitting inaccurate time cards. (*Ex. 15.*) Supervisors apparently knew of these violations, but did not take action against them. (*Hearing Testimony of Lieutenant Johnny Sgrignuoli “Sgrignuoli.”*) Only after the supervisors retired was there an internal affairs investigation into the matter. Notably, Hackbarth herself was also investigated in this time period, but no rules violations on her part were established. (*Ex. 11.*) There were some concerns raised, however, about her use of Department-issued parking validations for the nearby MacArthur Square parking facility, and it appears that she received some informal counseling that she should not continue to use these validations. (*Ex. 11.*)
4. The new CAS supervisors also had difficulties. In particular, receiving little support from his colleagues, Murphy found himself overwhelmed by his CAS responsibilities.

(Sgrignuoli Testimony.) As a result, he delegated some significant aspects of his supervisory authority to Hackbarth. (Murphy Testimony; Ex. 1, p. 7.) For instance, he gave Hackbarth his computer password and authorized her to approve overtime cards under his name. She also had authority to approve the payroll for CAS employees, including—significantly—herself. In the wake of the events giving rise to this appeal, Murphy has been counseled by the Department not to delegate his authority in this fashion again. (Murphy Testimony.)

5. In April 2013, the Department's Internal Affairs Division received an anonymous letter alerting the Department to discrepancies in Hackbarth's timecards. Sergeant Kurt Drezek ("Drezek") of Internal Affairs conducted an investigation that is thoroughly documented in Exhibit 1.
6. Drezek's investigation identified ten days from February 7, 2013, to May 7, 2013, on which Hackbarth claimed eight to ten hours of work for pay purposes, but on which she actually worked much less than claimed or not at all. These days were referred to as the "target days" in the hearing testimony. Exhibit 2, prepared by Drezek, summarizes the evidence pertaining to the target days.
7. At the hearing, Drezek testified as to the process by which CAS employees' hours were tracked for pay purposes. First, each employee was responsible for filling out a PT-43 timesheet by hand. Each timesheet covered a two-week pay period. Exhibit 3, for instance, includes a number of Hackbarth's PT-43 forms. Employees were responsible for submitting their timesheets at the end of each pay period. Then, the information from all of the PT-43 forms from the CAS was manually entered by Hackbarth into the electronic payroll system. If there were questions about an employee's hours, the employee's PT-43 could be checked against data contained in other employee tracking systems. For instance, there was also an electronic attendance roster. Four people, one of whom was Hackbarth, were authorized to input CAS data into this system. The overall idea was, as Drezek put it, to have a variety of "checks and balances" in place to prevent employee error and abuse. However, by virtue of the extraordinary authority she received from Murphy and the lack of effective oversight of her work, Hackbarth was well positioned to subvert the checks and balances if she wished to do so.
8. Notwithstanding Hackbarth's control over the entry of much of the key data in this case, Drezek was able to confirm discrepancies in her timekeeping through the assistance of four additional resources. First, the electronic security system at the Police Administration Building ("PAB") requires use of an ID card to gain access to various parts of the building. On nine of the ten target dates, there was no activity on Hackbarth's building ID. On the tenth, the security system indicated that Hackbarth was in the building for only 2.5 hours, even though she claimed eight hours on her PT-43. Second, on nine of the ten target dates, there was no login activity on Hackbarth's computer account. On the tenth, someone did log her out of the system, but Drezek found information to suggest that someone else was using her desk on that day and probably logged out for her. Third, Drezek determined that Hackbarth had requested and received permission to use vacation days on four of the ten target dates. (Ex. 4.) Fourth,

and finally, Drezek identified emails from Hackbarth that provided additional support for absences on six of the target dates. (Exs. 6-10.)

9. Based on her counsel's representations and her own testimony at the hearing, Hackbarth does not dispute that she requested pay for hours that she did not work. She did testify that she recalled working on one of the days for which she requested vacation time, but could not say which one and provided no corroborating evidence. Even granting her the benefit of the doubt on this point, she still sought pay for hours she did not work on at least nine occasions. Whether or not there was also a tenth occasion seems of little consequence for purposes of this appeal.
10. The most important factual dispute in this appeal is whether Hackbarth's errors were intentional or inadvertent. According to Hackbarth, her errors were merely sloppy recordkeeping. She testified that she did not fill out her PT-43 forms on a daily basis, but instead waited until the end of the two-week pay period, which created risks of error based on faulty recollection about how long she worked on which days. Additionally, she notes that Monday mornings, when she had to finalize her payroll forms, were a particularly chaotic time in the CAS, as there was often a crush of officers from district stations coming downtown to testify. She further notes that she had suffered a concussion in a motorcycle accident in 2007 and has experienced ongoing memory lapses since then. (In his testimony, Murphy confirmed that she had complained to him about memory issues at home on more than one occasion.) Finally, she indicates that 2013 was a particularly difficult year for her and her family in a number of respects, creating a variety of stresses and distractions in her personal life. (Ex. 13.)
11. Despite these considerations, we believe that the evidence provides stronger support for the City's theory of intentional misconduct. First, there is the uniform direction of the errors: they were all in Hackbarth's favor. Simple negligence should have produced about as much undercounting of her hours as overcounting. Second, there are all of those glowing evaluations testifying to her competence and accuracy. (Ex. 14.) Whatever memory lapses and stresses she was experiencing at home, it appears that she was able to keep track of the hours of other Department members very reliably. Although Hackbarth testified that she did sometimes make errors on others' timecards that eventually had to be corrected, she offered no corroboration, and her testimony seems belied by her evaluations. Moreover, Murphy testified that he saw no signs of her alleged memory problems on the job, and he could recall only one officer complaining about the way that she tallied his hours, which seems remarkable given the volume of time cards she worked with (again, the CAS typically had to process 800-900 overtime cards every two weeks). Third, there is the frequency of the errors—nine or ten over a three-month period, including three in a single two-week pay period (ending February 16, 2013), and two each in two other pay periods (ending April 13 and May 11). Fourth, and finally, there is the evidence of motive. Hackbarth testified that she lived paycheck to paycheck, and had recently found herself unable to cover her monthly parking fees (more about this below). She was also experiencing a number of other challenges in her personal life. (Ex. 13.) It is easy to infer that she had a particular need for time off from work, but could not afford to take unpaid leave.

12. In addition to misreporting her hours, Hackbarth has also been charged with improperly validating her parking. The Department has the capacity to validate parking for members who use the privately run MacArthur Square parking facility, which adjoins the PAB. It costs the Department either \$11 or \$12 per validation (the record was unclear on this point). The validation system was intended for the benefit of members who are based in other district stations and come downtown on Department business. Hackbarth and other employees based in the PAB were given a different option: if they paid the \$115 monthly parking fee at the MacArthur Square facility, the Department would reimburse their expense. For members working full time in the PAB, this monthly arrangement would cost the Department about half as much as daily validation. As noted above, Hackbarth was counseled in 2012 that she should use this less expensive option. However, given Hackbarth's tenuous finances, she was unable to continue paying the \$115 upfront each month. Thus, despite the counseling she received in 2012, Hackbarth resumed using the validation system.
13. Hackbarth does not dispute that she resumed using the validation system. However, she maintains that she did not cost the Department any money by doing so. She testified that she obtained validations each month only until she reached the \$115 level that the Department would have been willing to pay for her parking through the monthly system. Then, for the remainder of the month, she parked on-street or made other arrangements.
14. Since the Department does not maintain a permanent record of who uses parking validation when, it is impossible to confirm or disprove Hackbarth's testimony on this score. Drezek testified that building ID records indicate Hackbarth regularly entered the PAB via the MacArthur Square parking facility, which might seem to undermine Hackbarth's testimony about making other parking arrangements in the second half of the month. However, Hackbarth testified that the parking facility provided her with the most convenient access to her office even when she parked elsewhere. On this record, we are unable to conclude that the Department was financially harmed by Hackbarth's use of the parking validation system. However, whether or not there were monetary losses, there remains the undisputed fact that Hackbarth used the validation system without authorization.

CONCLUSIONS OF LAW

15. In appeals of this nature, we are required first to determine whether the City has proven its charge against the disciplined employee by a preponderance of the evidence. (Rules of the Board of Fire and Police Commissioners, Rule 16, § 12.)
16. Hackbarth has been charged with violating Department Core Value 3.00 – Integrity, referencing Guiding Principle 3.01, which reads in pertinent part as follows: “Whether on or off duty, department members shall not behave in such a way . . . that it would create the appearance of impropriety” (Ex. 12.) At the hearing, through her counsel, Hackbarth conceded that she violated this rule. Even if she did not make this concession, we would have little difficulty concluding that she created at least an appearance of

impropriety through her erroneous hours reports and her unauthorized use of parking validation.

17. Having sustained the charge, we must “determine whether the good of the service requires that the appellant be permanently discharged” or given a lesser discipline. (R. 16, § 14.) For purposes of this determination, we may receive, and hence presumably take into account, evidence of “the member’s character, work record, and the impact of the misconduct on the complainant, department, and community.” (*Id.*)
18. We find this determination to be a close question. Hackbarth does have a few considerations working in her favor. First, the financial loss to the Department was relatively small. The Department estimated the loss from falsely recorded hours to be about \$1600, (Ex. 12), and we have not been able to determine whether there was any loss at all from the parking validations. The \$1600 might be compared, for instance, to Murphy’s undisputed assertion that Hackbarth “has probably realistically saved the Department many thousands of dollars” through her diligent oversight of timecards submitted by other members. (Ex. 14.) Second, Hackbarth has compiled a lengthy and impressive record of prior service to the Department. Third, Hackbarth has indicated, and the City has not disputed, that the time of her violations coincided with a period of extraordinary stress and financial strain in her personal life. (Ex. 13.) While such unusual hardships do not excuse violations of the rules, they do provide a basis for hoping that the violations constitute aberrational behavior that is not likely to be repeated in the future, especially in a case, like this one, involving an employee with a strong track record of prior service to the Department.
19. In the equitable calculus what may cut most powerfully in Hackbarth’s favor is the troubling sense we have that the Department itself bears some blame for her misconduct. First, we note that prior cases of facially similar misconduct (falsified timecards) have resulted in relatively light discipline. (Ex. 15.) Most notably, the officers involved in the CAS scandal of 2012 each received only relatively brief suspensions. To be sure, Sgrignuoli’s testimony clarified the circumstances of the scandal and offered reasonable explanations for the Chief’s very different disciplinary approach in the earlier cases. In essence, the suspensions constituted a restitutionary discipline—the officers’ unpaid suspension time was calculated to offset the cost associated with their false timecards. While there seem to have been valid justifications for this approach, it may have unintentionally sent a message to other CAS employees, including Hackbarth, that inaccurate timecards are not that big of a deal—you can just compensate the Department later, and all will be well. Second, it seems to us that Murphy’s actions in relation to Hackbarth—his delegation of excessive authority to her and his failure to supervise her properly—practically invited abuse. If Murphy felt overwhelmed and was getting inadequate support from the other supervisors in the CAS, it is unclear to us why he did not take this problem up the chain of command. (And perhaps he did, but we have nothing in our record to suggest as much.) Likewise, it is unclear to us why the Department did not have stronger safeguards in place to prevent another supervisory breakdown in the CAS so soon after the scandal of 2012. While Murphy struck us as thoroughly decent and well-intentioned, we cannot help but question whether some

sterner discipline was in order for him based on his enablement of Hackbarth's misconduct.

20. Of course, it is not our role in this proceeding to make disciplinary decisions about anyone but Hackbarth. And, when it comes to Hackbarth, we simply cannot get around the aggravating factors: we have found that her violations were deliberate, repeated on multiple occasions, and motivated purely by personal gain. Under these circumstances, it is hard for us to see how the Department can repose any trust in her again.
21. We agree with Hackbarth that it is important for us to take into account "comparables" when we make disciplinary decisions—that is, the discipline that has been imposed in similar cases in the recent past. We also agree with Hackbarth that the CAS cases of 2012 bear enough similarity to this case that it is appropriate for us to consider them. In the end, though, we are satisfied that various factors identified by Sgrignuoli serve to distinguish those cases from this one, particularly the facts that supervisors actually knew about the misconduct in the earlier CAS cases, that the officers involved accepted responsibility for their violations, and that the large number of CAS cases in 2012 called for some sort of expedited resolution (much as docket pressures in a criminal court justify plea-bargaining by prosecutors).
22. Hackbarth testified that she accepts responsibility for her violations, too. This seems to us an overstatement. On the one hand, and decidedly in her favor, she has not disputed that she submitted erroneous time records and obtained unauthorized parking validations. On the other hand, she has downplayed her violations as merely sloppy recordkeeping. This does not constitute full acceptance of responsibility.
23. In light of all of the foregoing, we conclude that the good of the service requires that Hackbarth be permanently discharged.

DECISION

The Appellant, Christine A. Hackbarth, is ordered discharged from the Department.

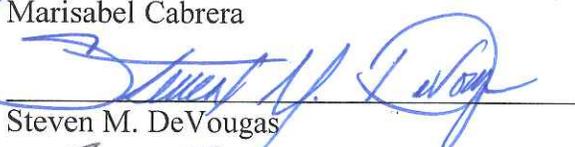
Dated at Milwaukee, Wisconsin.

BY THE COMMISSION:



Marisabel Cabrera

6/5, 2014



Steven M. DeVougas

6/5, 2014



Michael M. O'Hear

6/5, 2014