BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST	**)**	
POLICE OFFICER JOHN HALEAS,	**)**	**No. 14 PB 2848**
STAR No. 6719, DEPARTMENT OF POLICE,	**)**	
CITY OF CHICAGO,	**)**	
	)	**(CR No. 1015760)**
RESPONDENT.	**)**	

MEMORANDUM OPINION AND ORDER

On February 5, 2014, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer John Haleas, Star No. 6719 (hereinafter sometimes referred to as "Respondent"), recommending that the Respondent be discharged from the Chicago Police Department for violating the following Rule of Conduct:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

The specific charges brought by the Superintendent are as follows:

Count I: On or about August 2, 2012, in the Circuit Court of Cook County, Illinois, County Department, Criminal Division, Police Officer John Haleas was found guilty of one count of Attempted Obstructing Justice under 720 ILCS 5/8-4 ("Attempt"), incorporating the provisions of 720 ILCS 5/31-4 ("Obstructing Justice"), a Class A Misdemeanor, for attempting to obstruct the defense of any person by knowingly furnishing an alcohol drug influence report with false information in the course of his official duties as a police officer, which constituted a substantial step towards the commission of obstructing justice, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

Count II: On or about April 9, 2008, Police Officer John Haleas was indicted on four counts of Official Misconduct, a Class 3 Felony, four counts of Perjury, a Class 3 Felony, and two counts of Obstructing Justice, a Class 4 Felony, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

The Respondent filed a Motion to Strike and Dismiss these charges. The Superintendent filed a Response and a Supplemental Response, and the Respondent filed a Reply.

The Police Board caused a hearing on these charges against the Respondent to be had

before Thomas E. Johnson, Hearing Officer of the Police Board, on June 24 and 26, 2014.

Following the hearing, the members of the Police Board read and reviewed the record of the proceedings (including the Motion to Strike and Dismiss, Response, Supplemental Response, and Reply) and viewed the video-recording of the testimony of the witnesses. Hearing Officer Johnson made an oral report to and conferred with the Police Board before it rendered its findings and conclusions in this matter.

The Respondent in his Motion to Strike and Dismiss requests that the charges filed against him be stricken and the case dismissed for the following reasons: (1) punishing the Respondent a second time for the same incident violates the Municipal Code of the City of Chicago and Illinois case law; (2) the failure to bring timely charges violates due process, the doctrine of laches, and departmental general orders; (3) the penalty of discharge is excessive; and (4) the recommendation for discharge does not meet the standard of just cause. The Respondent's Motion to Strike and Dismiss is **granted** for the reasons set forth below.

Just Cause for Discharge and the Propriety of Discharge

The arguments that the penalty of discharge is excessive, and that the recommendation for discharge does not meet the standard of just cause, are not proper bases on which to dismiss the case; rather, these are arguments that go to the merits of the case. However, assuming *arguendo* that these arguments are the proper subject of a motion to dismiss, the Board disagrees with Respondent's contentions that the conduct alleged fails to constitute "just cause," and that discharge would be an excessive penalty. The Board finds that Officer Haleas's conduct, as alleged and as demonstrated at the hearing, was reprehensible and, in the Board's judgment, clearly warrants a penalty of discharge. He admitted before the Circuit Court that he lied on a

police report, saying he conducted a field sobriety test when he did not do so. He failed to discharge his police duties while in the presence of assistant state's attorneys, who accompanied him in order to observe police practices. His lie was used as the basis, in part, for arresting a citizen. We expect our police officers to be honest, particularly in the performance of their core police duties on the street. The Board finds Officer Haleas's conduct to clearly be a serious shortcoming which renders his continued employment detrimental to the discipline and efficiency of the police force and constitutes good cause for his dismissal, thereby satisfying *Launius v. Board of Police and Fire Commissioners,* 151 Ill.2d 419, 435 (1993). If the Board were permitted by law to consider the merits of the case, it would find Officer Haleas guilty of Count I of the charges, and discharge him.

Delay

Nor was there any unconstitutional or prejudicial delay in the bringing of the charges against Officer Haleas. Neither the Due Process Clause, the equitable doctrine of laches, nor the Department's General Orders require dismissal of the charges.

a. Due Process. Citing *Morgan v. Department of Financial and Professional Regulation,* 374 Ill.App.3d 275, 871 NE2d 178 (1st Dist 2007), and *Lyon v. Department of Children and Family Services,* 209 Ill.2d 264 (2004), the Respondent claims that the Constitution precludes such a lengthy delay in the investigation of the Respondent's alleged misconduct. *Morgan* and *Lyon,* however, involved a delay in *adjudication* of allegations of misconduct after the respective plaintiffs had been suspended from their jobs—not delay in the *investigation* leading to the initial suspensions. *Morgan* involved a clinical psychologist accused of sexually abusing a patient, where the state took fifteen months to decide the case after the suspension. *Lyon* involved a

teacher accused of abusing students where the director of DCFS failed to honor specific regulatory time limits for decision-making.

The Respondent's case before the Police Board is different from *Morgan* and *Lyon*, as the Respondent in his Motion is complaining about the delay from the time of the incident to the bringing of charges, not the time it took to try him once the charges were filed and he was suspended without pay. This difference is important because the due-process analysis in *Morgan* and *Lyon* is triggered by the state's decision to deprive the psychologist and teacher of their jobs, thus preventing them from working for prolonged periods of time before they were accorded the opportunity to have a hearing and decision to clear their names. The Due Process clause precludes a state or local government from "depriving any person of life, liberty or property [i.e. a public job] without due process of law." Here, the Respondent was not suspended without pay from his job until *after* the charges against him were filed with the Police Board (with the exception of the one-day suspension he served). Therefore, the Respondent was *not* deprived of his job prior to the filing of charges, and any delay in bringing the charges is therefore *not* a violation of the Respondent's due process rights.

b. Laches. The Respondent argues that the doctrine of laches should apply here and support dismissal of the charges, as he contends that the delay in bringing the charges against him resulted in prejudice. The prejudice he asserts is that he is "currently facing the loss of 16 years of gainful employment" (Haleas Motion to Strike and Dismiss, at p. 8).

Laches is an equitable doctrine that is used to prevent a party in litigation from enforcing a right it otherwise has because it has not been diligent in asserting this right and the opposing party has been prejudiced in its defense of the claim by the delay. *Nature Conservancy v. Wilder*, 656 F.3d. 646 (7th Cir. 2011); *Hannigan v. Hoffmeister*, 240 Ill. App. 3d 1065, 1074 (1st Dist.

1992). Even then, laches can only be invoked against a municipality under compelling or extraordinary circumstances. *Van Milligan v Board of Fire and Police Commissioners of the Village of Glenview*, 158 Ill.2d 85, 630 NE2d 830 (1994). Here, Officer Haleas does not even allege prejudice in his defense of the case brought against him, but rather simply fears the loss of his job. This is not the kind of prejudice that triggers laches.

c. Department General Order G08-01. Officer Haleas argues that the Department's General Orders require a prompt and thorough investigation of disciplinary cases, and that the Department has failed to fully comply with its own Orders.

General Order 93-03 and Special Order 08-01-01 do provide for the prompt adjudication of disciplinary proceedings against officers, but do not set an absolute deadline within which investigations must be completed. Much of the delay here stemmed from the State's Attorney's decision to indict Officer Haleas, and the lengthy criminal proceedings that then ensued. The Department is not responsible for any of this delay. Indeed, there was no substantial delay by the Department here, and so the Board finds that these general and special orders of the Department were not violated. Even if they were violated, however, there is no provision in either order requiring the extraordinary remedy of dismissal of the case as a sanction for such a violation. The Board declines to extend the reach of either the General or Special Order in this manner.

Double Punishment

Though the Board is convinced that Officer Haleas's conduct warrants a penalty of discharge, the former Superintendent of Police has foreclosed that possibility by investigating the case and imposing in 2007 only a one-day suspension on Officer Haleas for his conduct. The Illinois Supreme Court has clearly held that a government employee may not be punished twice

for the same conduct. Thus, the Police Board may not revisit the disciplinary decision the Superintendent made back in 2007.

In *Burton v Civil Service Commission,* 76 Ill.2d 522 (1979), the Illinois Department of Revenue suspended Mr. Burton, one of its security fraud investigators, for ten days because he had accepted a bribe and then provided false information about the incident. Thereafter, the Department attempted to fire Burton. Though the State argued, among other things, that the full extent of Burton's misconduct was not disclosed until after he was suspended, the Court found that "the investigation was completed and the entire course of misconduct known" before the ten day suspension was imposed. Because the Department of Revenue had no statutory authority to reconsider, modify or alter final disciplinary actions, the Court held the Department was barred from discharging Mr. Burton for the conduct that was the basis of the earlier suspension.

This prohibition on double punishment or jeopardy for the same conduct has been applied regularly by the appellate courts. For example, in *Rochon v Rodriguez*, 293 Ill.App.3d 952 (1st Dist. 1997), two probationary Chicago police officers who missed classes at the training academy were removed from the training program, placed on desk duty and required to repeat the entire training program. Thereafter, the Superintendent of Police discharged them. Because the discharge was predicated on the same misconduct, the appellate court found the discharge unlawful. *Accord: Messina v City of Chicago,* 145 Ill.App.3d 549 (1st Dist. 1986) (City of Chicago could not discharge bricklayer for putting a lewd and racist insult directed at his supervisor in cement where he had previously been suspended, as governing ordinance did not permit the City to suspend and also discharge employee); *Green v Board of Fire and Police Commíssioners*, 87 Ill.App.3d 183 (3rd Dist. 1980).

The Superintendent contends that he seeks discharge for conduct different than the false police report that gave rise to the 2007 one-day suspension. He insists that Officer Haleas's subsequent guilty plea to Attempted Obstructing Justice, and the State's Attorney's decision to disclose this conviction in every criminal case involving Officer Haleas, has rendered him ineffective as a police officer. The conduct that gave rise to the suspension, however, is exactly the same as the conduct to which Officer Haleas pleaded guilty in criminal court. A comparison of the suspension document with the guilty plea transcript confirms this to be the case.

This is not a case where the officer's conviction has rendered him ineligible to continue serving as a police officer, as a matter of law. There is no dispute that Officer Haleas has not been decertified as a law enforcement officer under 50 ILCS 705/6.1. Indeed, Officer Haleas testified that a key part of his plea agreement in the criminal court was the understanding that he would not be decertified as a police officer. Where a criminal conviction decertifies an officer, then the basis for discharging him from his position is not the underlying conduct but the decertification itself, because the decertification renders the individual legally unable to serve as a police officer; in addition, any continued law enforcement practice after receiving a conviction that leads to decertification is a Class 4 felony, pursuant to 50 ILCS 705/6.1(e). Thus, the legal prohibition against serving as a police officer is a basis distinctly separate from the underlying misconduct. There is no such legal prohibition in Officer Haleas's case.

The Superintendent also argues that language in 65 ILCS 5/10-1-18.1 permits the Superintendent of Police to suspend and later discharge an officer. In particular, the Superintendent points to the language providing that: "Nothing in this Section limits the power of the superintendent to suspend a subordinate for a reasonable period, not exceeding 30 days." The Police Board, however, does not read this language as authorizing a suspension for 30 days

or fewer, to be followed by a discharge for the same conduct. Rather, this statute created the Police Board and vested the Board with authority to hear and decide cases involving suspensions of more than 30 days, including discharge cases, and accorded police officers procedural protections in connection with these proceedings. The language to which the Superintendent points merely preserved the superintendent's power to suspend for 30 days or fewer in a given case which would, at the time the statute was enacted, not implicate the Police Board. This was later modified by the courts when they required some review, even in cases of suspensions that were 30 days or fewer. *Kropel v Conlisk*, 60 Ill.2d 17 (1975). The Board recognizes that the court in *Price v Board of Fire and Police Commissioners*, 139 Ill.App.3d 333 (4th Dist. 1985) might disagree with the Board on this point, but the intervening decisions in *Rochon* and *Messina* convince the Board that it may not impose additional discipline on an officer for the same conduct when he or she has previously been punished. Moreover, the City of Chicago has adopted an ordinance (Section 2-84-050 of the Municipal Code) that expressly provides, in pertinent part, that subject to the rules of the department, the instruction of the board, and civil service provisions, the "superintendent shall have the power and the duty ... (4) to appoint, discharge, suspend *or* transfer the employees of the department... " [emphasis added], which contradicts a reading of 65 ILCS 5/10-1-18.1 to confer on the superintendent the power to both suspend *and* discharge an officer for the same conduct.

By reason of the findings and determinations set forth above, the Respondent's Motion to Strike and Dismiss the charges shall be granted. All of the charges against the Respondent shall

therefore be dismissed.* As a result, cause exists for restoring the Respondent to his position as a police officer, and to the services of the City of Chicago, with all rights and benefits, effective February 22, 2014.

POLICE BOARD ORDER

NOW THEREFORE, IT IS HEREBY ORDERED that the Respondent's Motion to Strike and Dismiss the charges is granted, and the charges against Police Officer John Haleas, Star No. 6719, in Police Board Case No. 14 PB 2848, are dismissed.

IT IS FURTHER ORDERED that the Respondent, Police Officer John Haleas, Star No. 6719, be and hereby is restored to his position as a police officer with the Department of Police, and to the services of the City of Chicago, with all rights and benefits, effective February 22, 2014.

This disciplinary action is adopted and entered by a majority of the members of the Police Board: Demetrius E. Carney, Ghian Foreman, William F. Conlon, Michael Eaddy, Rita A. Fry, Susan L. McKeever, Elisa Rodriguez, and Rhoda D. Sweeney.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 21st DAY OF AUGUST, 2014.

* The Board finds that both counts of the charges against Officer Haleas must be dismissed, as they are both based entirely on the conduct for which he was previously suspended. The Board, however, finds that Count II of the charges would have to be dismissed independently because it charges only that Officer Haleas was indicted. The evidence shows he was not convicted of any of the charges for which he was indicted. They were all dismissed as part of his plea agreement. The indictment does not determine whether misconduct has occurred, and as such Officer Haleas cannot properly be disciplined solely on account of the indictment.

Attested by:

/s/ DEMETRIUS E. CARNEY
President
Police Board

/s/ MAX A. CAPRONI
Executive Director
Police Board

CONCURRING OPINION BY WILLIAM F. CONLON

The undersigned members of the Police Board write separately to share our observations about the manner in which this case was handled by the then Chicago Police Department in 2005, 2006 and 2007. As a result of actions taken then, the City is unavoidably left with the Respondent, an impaired Officer, as a member of the Chicago Police Department.

As noted above, the case arises from the Respondent falsifying at least one drug/alcohol test which led directly to the arrest of a citizen, and then lying about his false report in later reports he completed. DUI charges were then leveled against this citizen. This abuse of the Respondent's position occurred while on duty and in the presence of Assistant State's Attorneys who were accompanying the Respondent in order to learn how DUI arrests were made.

The facts of one such incident were all presented to the then Command Channel (all officers superior in rank to the Respondent) by the Internal Affairs Division of the Chicago Police Department. Inexplicably, IAD recommended a five-day suspension of Officer Haleas for a false report issued in connection with the arrest of a citizen. Not to be outdone by IAD in terms of surprising leniency, the five-day suspension recommendation was reduced to three days as it worked its way through higher ranking officers and eventually – again inexplicably – was reduced by the Assistant Deputy Superintendent of IAD to a one-day suspension.[1] In June 2007, the Respondent served his one-day suspension for documenting on official police reports that he had conducted a Field Sobriety Test on a motorist when he had not.[2]

[1] Part of the supposed basis of this leniency was the Respondent's record of 314 DUI tickets in a 12-month period.

[2] For reasons that are unclear, the Department did not consider Officer Haleas's misconduct to constitute the making of a false report – he was *not* charged with violating Rule 14 "Making a false report, written or oral."

In 2008, a Cook County Grand Jury indicted the Respondent on multiple felony counts related to false reports in connection with this DUI arrest. Nothing moved quickly in this matter, and finally on August 2, 2012, the Respondent pled guilty to one misdemeanor count for which he received a sentence of one year probation plus community service.

Officer Haleas remains a sworn Chicago Police Officer to this day. In light of the Board's legally-compelled decision here, as explained in the Memorandum and Order above, he will continue to serve and receive all the benefits of a Chicago Police Officer despite his abdication of responsibility and fraudulent behavior.[3]

So why are we in this sorry mess? It's because the Department in 2005, 2006 and 2007 decided the appropriate punishment was a one-day suspension; and Officer Haleas, (no surprise here) accepted that punishment and served his time, one day off without pay, but kept his job. Interestingly, at the same time this matter was proceeding, the then CPD administration was sending forward charges on other officers for which the then-Superintendent was recommending discharge.

In Police Board Case No. 04 PB 2542, the Department thought it appropriate to seek discharge for an officer who made a false or fraudulent statement to secure federal financial aid for her daughter. In Case No. 05 PB 2575, the Department recommended discharge for an officer who obtained car washes for his personal vehicle from a city car wash vendor without paying for the car washes. In 2006, the Superintendent recommended discharge for an officer

[3] Much discussion and testimony at the hearing was directed to whether Officer Haleas is impaired as a witness in any Court proceeding in which he may become involved. Make no mistake, he is impaired; his credibility and character for truthfulness and honesty are crushed by his prior conduct as a police officer. The required letter from the State's Attorney in any proceeding in which the Respondent would testify gives notice to any defense counsel of his conviction. Officer Haleas is, essentially, useless as a witness and, in turn, useless as a fully functioning police officer.

who submitted false invoices for reimbursement for the purchase of food at meetings (Case No. 06 PB 2616). In 2007, when the Respondent here was being presented with a one-day suspension for writing a phony DUI report on a citizen, a different officer in Case No. 07 PB 2623 was recommended for discharge for submitting phony overtime and compensatory time reports. And perhaps all these "discharge" recommendations were warranted. The question remains: What happened with Officer Haleas? Why a one-day suspension that drives us to where we are now?

Some may say that was then and this is now. But then is now; the consequences of the handling of this matter in 2005, 2006 and 2007 leaves the Police Board, the current Superintendent, the CPD and the public with this Respondent as a member of the Chicago Police Department. It is a sad result made even more so by the fact it was avoidable.

/s/ WILLIAM F. CONLON

Joined by:

/s/ RITA A. FRY

/s/ ELISA RODRIGUEZ

/s/ RHODA D. SWEENEY

DISSENT

The following members of the Police Board hereby dissent from the Order of the majority of the Board.

[None]

RECEIVED A COPY OF

THIS MEMORANDUM OPINION AND ORDER

THIS _____ DAY OF _____, 2014.

_____
GARRY F. McCARTHY
Superintendent of Police