

BEFORE THE BOARD OF POLICE AND FIRE COMMISSIONERS
OF THE CITY OF MADISON

Police Chief Shon F. Barnes,
Complainant,

v.

DECISION AND ORDER

Nicholas Ellis,
Respondent.

SYNOPSIS

The Statement of Charges (“Complaint”) in this case, dated October 25, 2023, alleges that the Respondent, Nicholas Ellis, violated the Madison Police Department’s Code of Conduct regarding Unlawful Conduct on May 18, 2023. Following extensive hearing, briefing, and deliberations, the Board has found the Respondent culpable and imposes the discipline of reduction in rank from Sergeant to Police Officer.

PROCEDURAL HISTORY

This matter came before the Board on a Complaint by Police Chief Shon F. Barnes, against Sergeant Nicholas Ellis, dated October 25, 2023. Complainant Chief Barnes has been represented by Assistant City Attorney Marci Kurtz. Respondent Ellis has been represented by Attorney Kathryn A. Harrell of the Wisconsin Professional Police Association.

The Complaint contained one (1) count and alleged a violation of the Madison Police Department’s Code of Conduct regarding Unlawful Conduct. The Board convened for the Initial Hearing on November 13, 2023. At the Initial Hearing, the Board scheduled the Evidentiary Hearing in this matter for February 8 and 9, 2024. The Board adjourned the Initial Hearing subject to the continuing Evidentiary Hearing.

The Board conducted the Evidentiary Hearing in this matter on February 8 and 9, 2024. As part of the Complainant’s case, Complainant Chief Barnes presented the testimony of eight (8) witnesses, including Chief Barnes. One of the witnesses testified in advance through an evidentiary deposition and her videotaped deposition was played for the Board. The deposition transcript was also submitted as an Exhibit and received into evidence. Complainant Chief Barnes also submitted Complainant’s Exhibits 1 through 17, which were received into evidence without objection. As part of the Respondent’s case, Respondent Ellis presented the testimony of three (3) witnesses, including Sergeant Ellis. Respondent Ellis also submitted Respondent’s Exhibits 1, 2, 4, 5, 6, 7, 8, and 9, which were received into evidence without objection.

Following the presentation of evidence, the Board invited the parties to submit written briefs in lieu of closing statements and oral argument, with a deadline of February 16, 2024. The Board

adjourned and continued the Evidentiary Hearing for the receipt of the parties' briefs and for the Board's deliberations.

On February 16, 2024, Complainant Chief Barnes and Respondent Ellis submitted written briefs, which were promptly distributed to Commissioners. On approximately February 17, 2024, the Board received the Transcript of Proceedings, which was promptly distributed to Commissioners.

The Board convened for deliberations on March 8, 2024. The Board's deliberations have been limited strictly to the record in this case. The Board carefully reviewed the evidence and weighed the demeanor and credibility of the witnesses. The Board found that the evidence sustained the allegations brought by Complainant Chief Barnes.

The Board's proceedings and deliberations are governed by Wis. Stat. § 62.13 and Rule 6 of the Board of Police and Fire Commissioners of the City of Madison. Wis. Stat. § 62.13(5) provides, in part, as follows:

Wis. Stat. § 62.13(5)(em) No subordinate may be suspended, reduced in rank, suspended and reduced in rank, or removed by the board under par. (e), based on charges filed by the board, members of the board, an aggrieved person or the chief under par. (b), unless the board determines whether there is just cause, as described in this paragraph, to sustain the charges. In making its determination, the board shall apply the following standards, to the extent applicable:

1. Whether the subordinate could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct.
2. Whether the rule or order that the subordinate allegedly violated is reasonable.
3. Whether the chief, before filing the charge against the subordinate, made a reasonable effort to discover whether the subordinate did in fact violate a rule or order.
4. Whether the effort described under subd. 3. was fair and objective.
5. Whether the chief discovered substantial evidence that the subordinate violated the rule or order as described in the charges filed against the subordinate.
6. Whether the chief is applying the rule or order fairly and without discrimination against the subordinate.
7. Whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the subordinate's record of service with the chief's department.

Complainant Chief Barnes bears the burden of proof on each of the just cause standards by a preponderance of the evidence. The Board has found that the evidence sustained Count 1 of the Complaint.

DECISION

1. Respondent Ellis has been employed by the Madison Police Department for fifteen (15) years. Respondent Ellis was promoted to Sergeant on August 30, 2014.
2. Respondent Ellis does not have prior discipline.
3. Respondent Ellis engaged in a physical altercation with his wife, Laura Ellis, on May 18, 2023, at their personal residence, which provoked a disturbance. Respondent Ellis was intoxicated and angry at the time of the incident. Laura Ellis was attempting to prevent Respondent Ellis from operating a vehicle. During the physical altercation, Respondent Ellis used his arm to temporarily restrain his wife while he attempted to obtain car keys from her. During the incident, there was shouting and yelling and one of Respondent Ellis' children took a video because she was scared that something might happen. Another child in the residence was crying. Therefore, based upon the evidence in the record, the Board is satisfied that the Respondent engaged in Unlawful Conduct in violation of Dane County Disorderly Conduct Ordinance Sec. 34.01(1).
4. The Madison Police Department maintains a Professional Standards and Internal Affairs Discipline Matrix. Unlawful Conduct is addressed in the Discipline Matrix. The category broadly covers unlawful conduct of any type. Unlawful Conduct is listed as a Category D. Category D includes "Violations that are contrary to the core values of the MPD or that involve a substantial risk of officer or public safety." Under Category D, sanctions guidelines may include suspension without pay for five to fifteen days. The Discipline Matrix states that the Chief of Police reserves the right to deviate outside the recommended Matrix guidelines. Respondent Ellis was aware of the Madison Police Department's Code of Conduct at the time of the incident that required him to not engage in unlawful conduct. The Code of Conduct has been in use within the Madison Police Department for many years. Respondent Ellis can reasonably be expected to have had knowledge of the probable consequences of the alleged conduct. On the day of the incident, Respondent Ellis expressed that he would potentially be losing his job over this incident, such that Respondent Ellis knew the potential consequences of his conduct. Therefore, the standard under Wis. Stat. § 62.13(5)(em)1. has been met.
5. The Madison Police Department's Code of Conduct regarding Unlawful Conduct is reasonable. Respondent Ellis does not dispute that officers are bound by the Code of Conduct and should not engage in unlawful conduct. Therefore, the standard under Wis. Stat. § 62.13(5)(em)2. has been met.
6. The Madison Police Department conducted an internal investigation. Lieutenant Angela Kamoske's findings were shared with Complainant Chief Barnes, who also reviewed the investigation. The Board is satisfied that the investigation constituted a reasonable effort to discover whether the Respondent did in fact violate a rule or order, including the rule against unlawful conduct. Respondent Ellis does not

dispute that this factor is satisfied. Therefore, the standard under Wis. Stat. § 62.13(5)(em)3. has been met.

7. The Madison Police Department's investigation was fair and objective. Respondent Ellis does not dispute that this factor is satisfied. Therefore, the standard under Wis. Stat. § 62.13(5)(em)4. has been met.
8. Chief Barnes discovered substantial evidence that Respondent Ellis violated the Code of Conduct regarding Unlawful Conduct. We have concluded that substantial evidence constituting at least a preponderance of the evidence in our proceedings has demonstrated that Respondent Ellis acted in violation of Dane County Disorderly Conduct Ordinance Sec. 34.01(1). The Board has considered the testimony of Respondent Ellis that there was not a disturbance during the physical altercation and does not find his version to be convincing. Therefore, the standard under Wis. Stat. § 62.13(5)(em)5. has been met.
9. Chief Barnes applied the rule against Unlawful Conduct fairly against Respondent Ellis and without discrimination. Respondent Ellis was aware of the Code of Conduct, including that unlawful conduct is prohibited. The Discipline Matrix outlines the guidelines and expectations for the Madison Police Department's response to complaints and the steps involved in the investigation of complaints and it would not be possible to include every type of unlawful conduct. We also considered the evidence in the record regarding the treatment of other officers. Respondent Ellis agrees that no discrimination occurred. Therefore, the standard under Wis. Stat. § 62.13(5)(em)6. has been met.
10. The Board considered Complainant Chief Barnes' proposed discipline of termination. We are not obliged to impose the same discipline as proposed by Complainant Chief Barnes. The conduct that occurred in this case is serious in nature. The fundamental role and responsibility of the Board is to uphold the public interest regarding the integrity of the Madison Police Department and to impose discipline as the good of the service may require. We also considered Respondent Ellis' record of service, including that Respondent Ellis has been a Sergeant since August 30, 2014. We determined that the discipline of reduction in rank from Sergeant to Police Officer reasonably relates to the seriousness of the conduct and to Respondent Ellis' record of service with the Madison Police Department. Therefore, the standard under Wis. Stat. § 62.13(5)(em)7. has been met.

ORDER

After full deliberations, the Commissioners unanimously agreed to impose the discipline of reduction in rank from Sergeant to Police Officer upon Respondent Ellis, effective immediately upon the filing of this Order.

William Greer, President

Date _____

Veronica Figueroa Velez, Secretary

Date _____

Kevin Gundlach, Commissioner

Date _____

Mary A. Schauf, Commissioner

Date _____

William Greer, President

Date

Veronica Figueroa Velez, Secretary

Date



Kevin Gundlach, Commissioner

3-8-24

Date



Mary A. Schauf, Commissioner

03-08-2024

Date

William Greer, President

Date



Veronica Figueroa Velez, Secretary

3/11/24

Date

Kevin Gundlach, Commissioner

Date

Mary A. Schauf, Commissioner

Date