

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

COPIES MAILED
7/28/98
MARIA GANTARIA

-----X
ROY DINKLE,

Plaintiff,

CV 95 4765 (RJD)

- against -

MEMORANDUM & ORDER

JOHN SIRACUSA, et al.,

Defendants.

-----X
DEARIE, District Judge.

Plaintiff Roy Dinkle, a former sergeant with the Staten Island Rapid Transit Operating Authority ("SIRTOA") Police Department, brings this action pursuant to 42 U.S.C. § 1983. Plaintiff claims that defendants violated his due process rights when he was discharged from his employment. Defendants move for summary judgment. The motion is granted.

BACKGROUND

SIRTOA is a subsidiary corporation of the Metropolitan Transit Authority ("MTA"). SIRTOA entered into a collective bargaining agreement with the United Federation of Law Enforcement Officers ("UFLEO"), effective November 9, 1988. This agreement includes provisions that guarantee a "fair and impartial hearing" to employees before they are disciplined or discharged, and an appeal from the decision made at this hearing. See Defendants' Exhibit 2.

Plaintiff became a police officer on September 25, 1974 and was promoted to the rank of sergeant on November 27, 1985. On July 6, 1993, the Inspector General of the MTA released a report outlining an investigation of misconduct committed by SIRTOA police department personnel. See Defendants' Exhibit 3. The report charged plaintiff with time fraud, hazardous

police operation, assault, moonlighting while on duty, drinking alcohol on SIRTOA property, personal use of police vehicles, and attending union meetings while on duty in violation of SIRTOA policy. Id.

Once this report was issued, George Governale, SIRTOA's General Manager, directed William Massi, Director of Finance and Administration, to prepare disciplinary charges against plaintiff and another sergeant also named by the Inspector General. As a result, SIRTOA charged plaintiff with using SIRTOA vehicles for personal use, failing to enforce SIRTOA rules, failing to report violations, working for other companies as a security guard when he was on duty at SIRTOA, participating in and permitting time fraud, loitering in department offices where his presence was not required, and planning and executing a hazardous field exercise. Defendants' Exhibit 4.

Mr. Governale directed John Russell, SIRTOA's Director for Capital Projects, to hold a hearing addressing the charges against plaintiff. By letter dated July 26, 1993, plaintiff was notified of the hearing and the charges against him. Defendants' Exhibit 4. At the hearing, plaintiff was represented by counsel. Plaintiff's Exhibit B. Plaintiff testified, called witnesses, and was permitted to cross-examine SIRTOA's witnesses. Id. Mr. Russell found the evidence substantiated the charges of time fraud, personal use of SIRTOA vehicles, and neglect of duty, but the remaining charges were either time-barred or not substantiated by the evidence. Defendants' Exhibit 15. Plaintiff was relieved of duty, and his appeal to Samuel S. Holmes, SIRTOA's Chief of Operations, was denied by written decision. Defendants' Exhibit 17. SIRTOA offered plaintiff an opportunity to appeal to a tripartite arbitration panel which would include an arbitrator designated by each party and a third mutually agreed upon arbitrator, but

plaintiff declined this offer. Defendants' Exhibits 18, 23.

DISCUSSION

The sole issue to be decided by the Court is whether plaintiff was afforded a fair and impartial hearing in accordance with due process. In Narumanchi v. Bd. of Trustees of Conn. State Univ., 850 F.2d 70 (2d Cir. 1988), the Second Circuit held that the analysis of a due process claim is a two stage process. First, it must be determined whether plaintiff has a protected property interest. Second, if a protected interest is identified, a court must then consider whether the government deprived plaintiff of that interest without due process. This second step must ask what constitutionally required process was due to the plaintiff and whether that minimum process was provided. Id. at 72.

The parties agree that the collective bargaining agreement negotiated on behalf of SIRTOA's employees created a property interest for employees in service for over one year. The Supreme Court in Board of Regents v. Roth, 408 U.S. 564 (1972) held that a person may possess a protected property interest in public employment if contractual provisions guarantee continued employment absent "sufficient cause" for discharge. 408 U.S. at 578. Even a de facto system of tenure, if shown, is sufficient to create a property interest. See Perry v. Sindermann, 408 U.S. 593, 602-03 (1972).

Here, the contractual terms of the collective bargaining agreement mandate a fair and impartial hearing to determine whether charges made against a SIRTOA employee with more than one year of service are substantiated and warrant discharge. In essence, this provision of the collective agreement guarantees continued employment absent the showing of cause. As stated

by the Second Circuit in Mack v. U.S., 814 F.2d 120, 123 (2d Cir. 1987), public employees have a due process property right in their positions if they have an expectation of continued employment created by law, contract, or policy. As conceded by defendants, the collective bargaining agreement in this case qualifies as a contract that creates such an expectation of continued employment.

Once it is established that plaintiff has a protected interest, the second step of the Narumanchi analysis requires that a court consider whether plaintiff was deprived of that interest without the minimum constitutional requirements of due process. In Narumanchi, the court held that a disciplinary procedure incorporated into a collective bargaining agreement satisfies due process as long as the procedures called for in the agreement satisfy the constitutionally required minimum process.

The collective bargaining agreement in this case mandates written notice of charges, a fair and impartial hearing, and an opportunity to present witnesses. See Defendants' Exhibit 2. The collective bargaining agreement also establishes an appeal procedure by which an employee may contest the Hearing Officer's decision. Id. It is clear from the submitted affidavits and exhibits that plaintiff was afforded the process agreed to in the collective bargaining agreement and that this process satisfies at least the minimum requirements of due process. The Supreme Court in Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532 (1985) set forth the essential requirements of due process. An individual with a property interest in his employment is entitled to "notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story." 470 U.S. at 546. The object of this process is to determine "whether there are reasonable grounds to believe that the charges against the employee

are true and support the proposed action.” Id. at 545-46.

In this case, the due process requirements of Loudermill were fully satisfied. Plaintiff was provided with notice of his hearing and the charges against him. Defendants’ Exhibit 4. Plaintiff testified at his hearing, called witnesses, and cross-examined the witnesses who testified against him. Plaintiff’s Exhibit B. Plaintiff then appealed his discharge to SIRTOA’s Chief of Operations, which was denied by written decision. Defendants’ Exhibit 17. Plaintiff declined SIRTOA’s offer to have his discharge reviewed by a tripartite arbitration panel. Defendants’ Exhibit 23.

Plaintiff nevertheless contends that his rights were violated because the collective bargaining agreement calls for a “fair and impartial hearing” and such a hearing could not be had when an employee of SIRTOA acted as Hearing Officer and Prosecutor of his case. Plaintiff’s Mem. at 8. Plaintiff argues that because Mr. Governale designated John Russell, SIRTOA’s Director for Capital Projects, as both Hearing Officer and Prosecutor, the hearing was inherently biased. Plaintiff, however, makes no specific allegations that Mr. Russell acted in any biased manner. As a matter of law, the fact that the hearing officer is also a management official does not show inherent bias and does not amount to a due process violation. In Schweicker v. McClure, 456 U.S. 188 (1982), the Supreme Court recognized a presumption that hearing officers are unbiased and that the burden of establishing a disqualifying interest is on the party making the assertion. 456 U.S. at 195-97. Plaintiff contends summarily that his hearing was “tainted from the outset.” Plaintiff’s Mem. at 6. He has offered no evidence to support this claim and is unable to carry his burden of establishing a disqualifying interest. There is no evidence that even suggests that Mr. Russell was biased in any way. Instead, the record shows

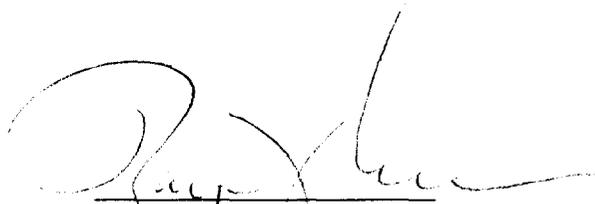
that Mr. Russell conducted an impartial hearing that fully complied with the requirements of due process.

For the reasons stated above, the Court grants defendants' motion for summary judgment.

The Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: Brooklyn, New York
July 28, 1998



RAYMOND J. DEARIE
United States District Judge