



The City of East Cleveland

"Home of John D. Rockefeller – The World's First Billionaire"

THE HONORABLE ERIC J. BREWER, *MAYOR*



December 11, 2009

Scott Gardner, Patrol Officer
City of East Cleveland
14340 Euclid Avenue
East Cleveland, OH 44112

HEARING DECISION / THREE-DAY SUSPENSION WITHOUT PAY

Officer Gardner:

Based upon facts presented during your December 1, 2009 disciplinary hearing, and my own knowledge of your work history and other information at my disposal, I have determined that you will receive a three-day suspension without pay for your insubordinate violation of a July 8, 2007 directive from the Mayor. That order prohibited any employee of the city from communicating with the news media without first obtaining the mayor's written permission. This is the second time you have been disciplined for violating the order. Future infractions could result in more severe punishment, up to and including termination from the incoming Mayor.

A hearing was held on December 4, 2009 in which facts were presented by the administration before attorney Timothy Clemons, a hearing officer who was agreed upon by both sides to determine whether "just cause" existed to discipline you. I will note that using the outside hearing officer did not follow normal practices, but was a requirement forced upon the city by Court of Common Pleas Judge Kathleen Sutula after the FOP requested and received a Temporary Restraining Order to thwart the disciplinary action against you. It was falsely alleged by your legal counsel that your "free speech" rights were being violated. The city was forced by the judge to spend public funds unnecessarily and to operate outside its lawful practices based upon false allegations in the FOP's pleadings that "the Mayor" was going to terminate you. For the record you were never under the threat of being terminated and anyone who created that false impression in your mind did not spoke to me and had no knowledge of my intentions.

You were represented by legal counsel and given the opportunity to present witnesses in your defense. Patrol Officer David Perez was made available to be your witness. During the hearing you agreed that his testimony was not necessary and he was dismissed.

The hearing revealed that you were out-of-town on vacation when I held a September 24, 2009 news conference and read a statement to the news media about an incident that had occurred during a partisan political campaign. The Chief of Police reacted emotionally and negatively to the statement because comments were made that criticized his handling of a controversy involving the dissemination of private material that viewed publicly might be considered obscene. The Chief of Police informed a city official that he was going to comment to the media about my statement, but decided to protect his own career when advised by the official that he would be disciplined and possibly terminated by me for violating my July 8, 2007 order.

As a footnote, you stated during the hearing that while the criminal matter was supposed to have been submitted to the Cuyahoga County Sheriff after it was assigned to you to be investigated, police leadership did not advance the investigation. You were unable to present the hearing committee with the name of the sheriff's deputy assigned to handle the investigation and acknowledged that you failed to contact any local official, including the Mayor, for a statement.

Instead of publicly addressing the issue himself, I was informed by the Director of Law that the Chief of Police allowed FOP representatives to meet in his office to discuss a strategy to issue a written statement that attacked the Mayor and defended the police department I had appointed him to manage. That's when you were called. I have learned that Patrol Officer David Perez allegedly wrote the statement that you issued to the news media. I am aware that you were wrongly informed by the Chief of Police that you had a right to speak to the news media and were not required to follow my order. To some extent I believe you and the FOP were manipulated by the Chief of Police to achieve his personal and retaliatory goals.

Despite the Chief of Police's poor advice and manipulative tactics, you had already been reprimanded by him in 2007 for violating the order. This fact established that you were aware of the order's existence and at the very least should have used your own judgment and not his self-serving opinion to protect yourself. As a public official who has been administered an Oath of Office to enforce rather than violate local, state and federal laws and policies, you have a duty to know the difference between right and wrong and to think for yourself. You should be aware that insubordination is a terminable offense and despite his perceived "power," the Chief of Police cannot protect any employee the Mayor decides to discipline. The Mayor, pursuant to East Cleveland's charter and Ohio law, is the only hiring and firing authority and is the only official with the authority to create or modify the police department's rules and policies: not the Chief of Police. No employee gets promoted, demoted or assigned to any position within the City of East Cleveland without the Mayor's prior approval.

Equally as important is that the Chief of Police has been prohibited by me from being involved in union activities since it violates the federal Taft-Hartley Act for him to do so. He is not an FOP member and has no right to participate in any union meetings, elections or activities. He is prohibited by state and federal law, and by me, from offering advice or opinions regarding FOP matters. Under no circumstance, as a management employee, should the Chief of Police have allowed a union meeting or union discussion to be held in his office. On-duty employees (including the Chief of Police) who participated in such a meeting, which has now been determined by the hearing officer to have not been related to union activities, could themselves face disciplinary proceedings or be criminally-charged with theft-in-office for performing non-official duties on city time.

If it weren't for the exigent circumstances, your punishment may have been more severe. But those circumstances and the fact that your personnel records do not reflect a troubled employee is the reason I am choosing to give you three-day suspension without pay. The only disciplinary action I found in your personnel file dealt with the previous violation. I'm aware of its effect on my decision, but it demonstrates that you were previously warned and punished, and was allowed into evidence by the hearing officer. I'll also note that I considered how East Cleveland residents have not complained that you have violated their rights or abused your authority, as well as the fact that you have but one violation during my four-year administration, as reasons for my decision to be more lenient with you.

I will advise that despite your erroneous belief about your right to free speech, and the Chief of Police's bad advice, unless another Mayor modifies or rescinds my order, orders from "Mayors," whether current or past, remain in effect from administration to administration. I have no doubt that

the incoming Mayor will see the wisdom in limiting employee access to the media and ensuring that the city speaks with one voice. I believe you learned during the hearing that despite your "union" position you are not an authority on city business or issues beyond your pay grade.

I am advising you to be respectful of all mayoral orders, laws and policies while you remain employed by the City of East Cleveland.

Respectfully,

Eric J. Brewer, Mayor

xc: Frances Paster, Director of Human Resources
Ron Brooks, Director of Finance
Almeta Johnson, Director of Law
Kenneth Adams, Deputy Safety Director
Ralph Spotts, Chief of Police