

**IN THE COURT OF COMMON PLEAS
- GENERAL DIVISION -
TRUMBULL COUNTY, OHIO**

CASE NUMBER: 2012 CV 02094

**STEVE CRAIGER
PLAINTIFF**

VS.

JUDGE ANDREW D LOGAN

**BRISTOL TOWNSHIP FIRE DEPARTMENT
DEFENDANT**

JUDGMENT ENTRY

This cause came before the Court on the administrative appeal filed by Steve Craiger. Craiger filed an administrative appeal following a decision by the Bristol Board of Trustees to terminate his employment with the Bristol Township Fire Department. This Court has jurisdiction pursuant to R.C. 4141.282. The Court has reviewed the pleadings, briefs, record, exhibits and the relevant applicable law.

R.C. 4141.282 (H) provides: "The court shall hear the appeal on the certified record provided by the commission. If the court finds that the decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence, it shall reverse, vacate, or modify the decision, or remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission."

Craiger was the Assistant Fire Chief for the Bristol Fire Department. On January 12, 2012, Bristol Township Board of Trustees placed Craiger on administrative leave. According to the decision of the Trustees, "[b]ased upon the weight of the evidence submitted and the credibility of the witnesses, the Board finds that Assistant Fire Chief Steven Craiger is guilty of one or more the charges (sic) filed against him for malfeasance, misfeasance, misconduct in office and/or gross neglect of duty and that the seriousness of his conduct warrants removal."

The Trustees also issued findings of fact wherein they found Craiger "admitted on the record" certain violations including insubordination as well as repeated violations of Standard Operating Guide 108.01, 109.01, 109.02, 111.03, 122.04, 202.07, and 202.20. However, in review of the transcript, the Court finds this is a mischaracterization of the evidence.

At the hearing regarding the charges allied against Craiger, the following trustees were present: Douglas Seeman, Ramon French and Mark Webb. Ramon French is the brother of Roger French, the Bristol Fire Chief and the authority bringing forth the charges against Craiger. At the outset, the Court notes the involvement of Ramon French in any inquiry as to the charges brought by his brother against Craiger is subject to extreme scrutiny due to the air of impropriety when such a close familial relationship is involved. As described by Ramon French at the beginning of the hearing, this is a quasi-judicial proceeding. As such, it is subject to high standards of fairness and due process and should be free from the appearance of impropriety.

Nevertheless, Ramon French not only was involved in the proceeding, he moderated the proceedings. In addition, he frequently questioned the witnesses at the conclusion of their testimony.

Equally disconcerting to the Court is an exchange between Trustee Seeman and Craiger regarding the bid process involving a company with which Seeman was involved in at the time. This bid process did not have anything directly to do with the charges against Craiger and the continued line of questioning by Seeman as to the bids was inappropriate and improper, also lending an air of impropriety to the proceedings.

The majority of the charges alleged against Craiger involve the department computer. Dale Briggs testified he examined the computer on Craiger's desk as well as

the dispatch room computer at the fire station at the request of Chief French.

According to Briggs, Chief French "**** asked me to look for any pictures that did not apply to the fire department." In addition, Chief French asked Briggs to locate any "LogMeIn" or "Skype" computer programs. Briggs located Skype and LogMeIn on the computers and deleted both programs at Chief French's direction. In addition, he found personal photographs on the computers. Briggs also testified the dispatch computer was available to anyone in the fire station and the desk computer was available to anyone with a key to the office.

Craiger testified it was routine for everyone in the department to bring their photos in and download those photos to the computer on his desk. On many occasions, Chief French would be sitting in the same room while these activities occurred. Craiger admitted he uploaded personal photographs onto the department computer. Craiger believed Chief French was aware of this activity and never advised it was inappropriate.

Captain Charles Hudak testified he has worked for the fire department for 25 years. He acknowledged people routinely upload personal photographs onto the computer at the fire station. He also testified Chief French was well aware of these actions and took no action which would indicate it was improper to upload personal photographs. Captain Hudak also testified he has personally observed at least one other employee use the Skype capabilities to communicate with another individual off-site. Other employees also acknowledged at the hearing they had personal photographs uploaded onto the department computers.

The photographs became an issue after an inappropriate photograph was uploaded onto a department computer. Craiger photographed the installation of a sprinkler system in a pond on township property. Volunteers from the fire department

donated their time and talent that day to complete the project. During the day, Craiger took a series of photographs with the department camera to document the project. Near the end of the project, as Craiger was snapping pictures, the volunteers decided to "moon" the camera. Craiger unexpectedly captured this moment on film. Later, Craiger uploaded all of the photos from the day onto the department computer, including the "moon" shot.

The Court finds although this photograph was inappropriate and unnecessary, a simple request to delete the photograph from the department computer and potentially a reprimand for improper conduct would have been more prudent. It is unreasonable and arbitrary to terminate the employment of an individual who merely was the unsuspecting photographer, not the participant. It is also important to note the department employees worked on the pond on their own time in an effort to move the department forward. They were not paid. They were not on Township time.

The second focus of the charges concerned the remote access capabilities of a video feed system installed on the department computers. Chief French was concerned the operation of such a system might be a violation of law. Chief French was notified of this potential by employee Angela Cox.

Angela Cox testified that she discovered a camera feed running on the computer one day and brought her concerns regarding the same to Chief French. However, Cox testified she had "no proof" the camera feed was enabled by Craiger.

Donna Hawkins, a part-time employee described her experiences sitting at the computer in the dispatch room and identifying a blue-tooth symbol appear on the computer monitor. Hawkins would disable the icon because she interpreted the icon to mean someone was able to listen to the activities in the dispatch room if the blue-

tooth was enabled. However, Hawkins admitted there is no evidence anyone listened to such conversations as she suspected.

As to the video feed, the record is devoid of evidence that this ability was installed against Chief French's order. In fact, the record demonstrates Craiger did not hide these capabilities from anyone. He intended on using the video feed as a means to promote the department. Craig did admit he had the ability to use his iPhone to view the dispatch area at the station. Craiger testified Chief French knew about this technology and did not advise him to discontinue it.

Chief French admitted there was no evidence to support the charge regarding the audio/visual recordings. Chief French admitted there was only one instance of documented use of the video surveillance at the station. On that occasion, Craiger showed two other department employees the video surveillance capabilities from a remote location. Chief French offered no evidence of any improper use of this capability, only speculation. In addition, he also implicitly agreed to the video feed from the computer. Chief French admitted Craiger told him about the idea and the Chief advised it could be a good idea.

The third group of allegations against Craiger concern his attendance at a FEMA meeting after he had been placed on administrative leave. Craiger admitted he attended the FEMA meeting at the Howland Fire Department on June 6, 2012. He wore a t-shirt with the Bristol Fire Department logo on it. He also signed in as the assistant chief. However, there was no personal gain sought by this attendance or participation.

In addition, it is apparent from the testimony that Craiger attended the FEMA meeting in a good-faith attempt to follow through with the FEMA funding for the new fire department building. Craiger was the person who had been in charge of writing

the grant and obtaining the funding for the new fire station. If anything, this is evidence of his commitment to the fire department's well-being, not an offense worthy of termination.

After review of the transcript and the evidence, the Court finds there is no evidence of any instructions, orders or discipline meted out by Chief French and then disregarded by Craiger. In fact, at least two employees testified there was little to no discipline at the fire department. Also, all the employees and volunteers had unrestricted access to at least the computer in the dispatch room. There was also testimony that everyone used the computers for their own personal use, including video chat.

There was no evidence presented that Craiger violated any of the SOPs cited in the findings of fact. Any "violations" were de minimis at best and manufactured without any history of actually following the SOP on a routine basis.

The Court is mindful of its review position as previously stated herein. This Court is not permitted to make factual findings or determine witness credibility. *Barnes v. Ohio Department of Job and Family Services*, 11th Dist. No. 2002-G-2426, 2003-Ohio-1883, ¶22. However, "whether just cause for termination exists is a question of law and the reviewing court has a duty to reverse the board's decision if it is contrary to law." *Id.* at ¶23.

The Court finds there is no evidence to support Craiger was guilty of bribery, misfeasance, nonfeasance, misconduct in office, gross neglect of duty, gross immorality or habitual drunkenness pursuant to R.C. 505.38. The Court finds the characterization that Craiger admitted the charges presented is against the manifest weight of the evidence. For nearly every charge against Craiger, Chief French had direct or implied knowledge and acquiesced to the activity.

Upon review, the Court finds the appearance of impropriety as to the participation of Trustee French taints the underlying proceedings and the Trustees are directed to proceed with caution to avoid this impropriety going forth. In conclusion, pursuant to R.C. 4141.282(H), the Court finds the decision of the Trustees was unlawful, unreasonable and against the manifest weight of the evidence. As such, the Court hereby reverses the decision of the Trustees.

IT IS SO ORDERED.

This is a final appealable order and there is no just cause for delay.


JUDGE ANDREW D LOGAN

Date: February 12, 2014
Copies to:
JAMES F. MATHEWS
MARK S. FINAMORE
DAVID C. COMSTOCK JR

FILED
COURT OF COMMON PLEAS

FEB 12 2014

TRUMBULL COUNTY, OH
KAREN INFANTE ALLEN, CLERK

TO THE CLERK OF COURTS: YOU ARE ORDERED TO SERVE
COPIES OF THIS JUDGMENT ON ALL COUNSEL OF RECORD
OR UPON THE PARTIES WHO ARE UNREPRESENTED FORTH-
WITH BY ORDINARY MAIL


JUDGE

