

Metropolitan News-Enterprise

Monday, October 21, 2013

Page 1

C.A. Reinstates Union Suit Challenging LAPD Disciplinary Practice

By KENNETH OFGANG, Staff Writer

The Court of Appeal for this district Friday reinstated a union lawsuit challenging Los Angeles Police Chief Charlie Beck's alleged policy of issuing "involuntary conditional Official Reprimand(s)" to officers accused of disciplinary violations.

Div. Three reversed the lower court's dismissal of a suit seeking declaratory and injunctive relief from the policy. The Los Angeles Police Protective League alleges that the conditional reprimands, or CORs, violate officers' rights by imposing "a predetermined minimum disciplinary penalty which will be imposed in the event of a future commission of the same or similar misconduct by the officer."

Such predetermined discipline violates officers' state and federal constitutional rights to a fair and impartial hearing, as well as rights guaranteed by state statute and the city's charter, the union alleged.

Unpublished Opinion

Justice Walter Croskey, in an unpublished opinion for the panel, said Los Angeles Superior Court Judge Michael L. Stern erred in granting the city judgment on the pleadings.

Stern ruled that the complaint was vague as to the legal bases for the claim, that the issue was not ripe because there was no allegation that any officer had actually suffered a violation of due process as a result of an alleged minimum penalty, and that "an autonomous administrative body has the right to make its own rules."

Croskey, however, said the complaint adequately pled the existence of an actual controversy between the city and the union regarding the rights of officers represented by the LAPPL.

An actual injury need not occur for declaratory relief to be available, Croskey explained, because one of the purposes of such relief is to resolve the looming issues before the injury occurs. A declaratory action is particularly appropriate, he added, when the issues involve general policies, rather than fact-specific individual claims.

'Reasonable Inference'

"Furthermore," the justice wrote, "a reasonable inference can be drawn from the complaint that minimum penalties will be imposed on officers who repeat misconduct based on the authority of respondents – the Chief of Police and the City – over the Board of Rights, and the complaint's allegation that the minimum penalties are "establish[ed]," not suggested or recommended."

The justice also rejected the city's contention that there was no actual controversy because the final decision on discipline in an individual case will be made by the Board of Rights—made up of two high-ranking LAPD officers and one civilian—which would not be bound by any conditional reprimand.

The argument "defies common sense," Croskey wrote.

"Respondents' claim that the Board of Rights – which, according to the complaint, consists primarily of officers subordinate to the Chief of Police and employed by the City – could and would simply ignore these orders based on the Board of Rights' own contrary interpretation of the Charter's and [Board of Rights] Manual's provisions is unlikely," the jurist said.

Croskey also rejected the "circular logic" of the city's argument that injunctive relief would be inappropriate because the union did not exhaust administrative remedies.

“The complaint alleges that the League’s members are being denied the procedural safeguards provided for by the Charter and Manual with respect to a Board of Rights hearing,” he reasoned. “Therefore, respondents’ argument that the League’s members must rely on the Board of Rights’ process to address their grievance here ignores the complaint’s allegations.”

Attorneys on appeal were Richard A. Levine of Silver, Hadden, Silver, Wexler & Levine for the union and Deputy City Attorney Paul L. Wimmemore for the city and its chief of police.

The case is *Los Angeles Police Protective League v. City of Los Angeles*, B247156.

Copyright 2013, Metropolitan News Company