

Can a police officer be disciplined where the department fails to implement or follow the Attorney General's Internal Affairs Guidelines?

The Law Enforcement Officers' Protection Act, effective January 9, 1997, mandated that every municipal law enforcement agency adopt and implement guidelines consistent with the Internal Affairs guidelines promulgated by the Division of Criminal Justice of the Attorney General's office (commonly referred to as "the AG Guidelines"). That requirement is codified at NJS.A 40A:14-181. An interesting question under the statute is what happens in the event a municipal police force tries to discipline an officer either without following, or without having adopted, the AG Guidelines? That question was answered, at least in part, by the unpublished Appellate Division decision of Neary v. Borough of Ridgefield, A-4266-03T2 (App. Div. 1/26/06).

In Neary, a patrol officer was terminated on charges that essentially boiled down to submitting false documentation to be paid for time not worked. Neary raised the issue that Ridgefield police administration had not adopted internal affairs guidelines consistent with the AG Guidelines in accordance with the statute, and argued that the charges should thus be dismissed.

The Borough of Ridgefield conceded that this failure to follow the statute and adopt and implement such guidelines would invalidate disciplinary charges based solely upon a police department's rules and regulations. The Borough noted a line of cases, however, firmly establishing that police officers are inherently subject to a certain "implicit standard[] of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct."¹ Police officers can thus be disciplined without reference to departmental rules and regulations, or even in absence of validly-adopted rules and regulations, for such conduct which violates that "implicit standard of good behavior." The Borough argued that a failure to adopt guidelines in accordance with the statute would not invalidate charges premised on violating that standard of behavior.

Judge Doyne, the Law Division Judge reviewing the officer's termination, agreed with the Borough. Judge Doyne noted that there was no authority for the officer's proposition that such serious charges should be dismissed on this technicality, and presumed that "no court would hold for such a broad and sweeping proposition." Judge Doyne noted that to accept the officer's argument would require courts to "ignore blatant transgressions... in contravention of the public interest." Judge Doyne found the officer's conduct "blatant and overwhelming" and thus upheld his removal. The Appellate Division affirmed.

Under Neary, we thus know that charges premised on a police officer's violation of the "implicit standard of good behavior" likely would not be thrown out for a technical failure to comply with the statutory requirement to adopt appropriate internal affairs guidelines. In fact, I have recently been involved in a case in Camden County where the Law Division Judge followed Neary to conclude that disciplinary charges involving violation of that standard would survive

¹In re Tuch, 159 N.J.Super. 219, 222 (App. Div. 1978).

even if the Attorney General guidelines were actually violated.

However, the unanswered question remains as to whether such a failure would warrant dismissal of charges based solely upon violations of departmental rules and regulations. The law is relatively clear that certain other legal technicalities absolutely will invalidate such charges. For example, failure to have rules and regulations adopted by the statutory “appropriate authority” designated in accordance with NJSA 40A:14-118², and failure to properly create and establish the police force by ordinance in accordance with that statute³, have been held to require dismissal of such disciplinary charges. Given those technicalities that have required dismissal of rule and regulation disciplinary charges, there is certainly good reason to think failure to adopt, implement and follow appropriate internal affairs guidelines would lead to the same result.

The distinction between charges of rule and regulation violations as opposed to violations of the “implicit standard of good behavior” is thus an important one to recognize. Perhaps the clearest illustration of the difference comes from Pizullo v. Hamilton Township⁴. There, an officer was charged with failing to make a physical cell check, which the departmental rules and regulations required every 30 minutes. The failure apparently contributed to a prisoner’s suicide. The officer then submitted an untruthful report claiming the cell check was done as required. The Appellate Division found that the department’s rules and regulations were invalid because they were not properly promulgated in accordance with NJSA 40A:14-118. The Appellate Division then held that the untruthfulness charge clearly violated the implicit standard of good behavior. However, the court also held that “[t]here are no general standards implicit in the performance of [the officer’s] duties which, in the absence of [the invalid rule] would require him to be responsible for cell checks of detainees every 30 minutes.” Therefore the untruthfulness charge withstood the technical failure and could be maintained, while the charge for failure to perform the cell check had to be dismissed.

In summary, a disciplinary action against an officer who has violated the implicit standard of good behavior expected of police officers should not fail if the department has failed to adopt and implement appropriate internal affairs guidelines. A disciplinary action based solely upon conduct that does not rise to that level, but merely violates departmental rules and regulations, might likely fail for that reason. In many cases, careful drafting of disciplinary charges can thus be crucial in that regard.

² See In re Baldinger, 220 N.J.Super. 267 (Law. Div.1987)

³ See Ruark v. City of Atlantic City, A-3889-97T3 (App. Div. 6/8/99) (dismissing charges on basis that Atlantic City police force had never been validly created since 1981).

⁴ Pizullo v. Hamilton Township, A-2548-96T5 (6/9/98),