

STATE OF NEW YORK
COUNTY OF LEWIS

SUPREME COURT

In the Matter of,

DARYL ORTLIEB,

Petitioner,

- against -

LEWIS COUNTY SHERIFF'S DEPARTMENT, and
MICHAEL CARPINELLI, as Sherriff of Lewis County,

Respondents.

VERIFIED PETITION

Index No.: CA2015-000316

R.J.I: _____

Charles C. Merrell, J.S.C.

The Verified Petition of DARYL ORTLIEB, for relief pursuant to CPLR Article 78,
respectfully states and alleges:

1. I have been employed as a Deputy Sherriff with the Lewis County Sheriff's Department since November of 2002. I am the only K-9 deputy in the department.

2. On August 21, 2015, the respondent, Sherriff Michael Carpinelli ("Carpinelli"), handed me a document entitled "Notice of Investigation" annexed as Exhibit "A" and demanded that I sign the document. I did sign Exhibit "A" simply to acknowledge receipt of the document.

3. As demanded in Exhibit "A," I thereafter prepared a written statement of events that occurred on August 17, 2015. A copy of that statement is annexed as Exhibit "B."

4. Carpinelli is running for reelection at the general election on November 3, 2015 and is opposed by another Deputy Sherriff, Todd Galarneau ("Galarneau").

5. Michelle Widrick ("Widrick"), the Dispatcher referred to in the Sheriff's "Notice of Investigation," was then acting as Galarneau's campaign manager and I supported him also. Upon information and belief, Carpinelli has harassed Widrick to where she is now on a medical leave for stress and she resigned as Galarneau's campaign manager on August 18 because of the pressures being placed upon her by Carpinelli. At that time, I became Galarneau's campaign manager.

6. Carpinelli demanded that I meet again with him on August 26, 2015. At that meeting, I gave him a copy of Exhibit "B." Throughout the meeting, Carpinelli repeatedly demanded a copy of the estimate that Widrick had shared with me on August 17. I again explained to him I had no copy of the estimate, and that I had handed it back to Widrick on August 17 after I read the document.

7. At the August 26 meeting, Carpinelli demanded that I turn in my handgun (which I did). He then stated that my only option was to either resign or be fired. He did not mention a due process hearing, or Section 75 of the Civil Service Law, or my right to grieve under the collective bargaining agreement. He also demanded that my decision be immediate.

8. I signed the resignation letter that Carpinelli had prepared because I feared that, if I was fired, I could never get successor employment with a law enforcement agency. I believed that my best chance for such future employment would be to resign.

9. My resignation letter is annexed as Exhibit "C." It specifies no outside date and, instead, it was to become effective after I exhausted my vacation and accrued leave time. My accrued leave runs out September 17, 2015 and I will be without an income as of that date. That is the primary reason why I request a Temporary Restraining Order that will continue my

employment and compensation pending the return of the requested Show Cause Order and the decision by the Court on my Article 78 petition.

10. After August 26, I was informed that Carpinelli's description of my options was inaccurate and that, as an employee in the competitive class of the Civil Service, I am entitled to a hearing under Civil Service Law §75 before I can be disciplined or discharged. I am also informed that the collective bargaining agreement between Lewis County, the Sheriff and the CSEA provides that I may be discharged or otherwise disciplined only for just cause and that any discipline may be grieved through the CBA's grievance procedure, including binding arbitration.

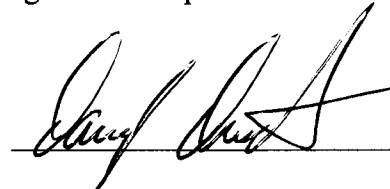
11. I would have not resigned if I had known that I had the right to receive written charges and to defend those charges before a neutral hearing officer or arbitrator.

12. On August 28, 2015, my CSEA representative, Brenda Harwood, informed Carpinelli that I requested to withdraw my resignation. That request was made well before my resignation became effective. At the suggestion of the County's personnel office, my request to withdraw the resignation letter was affirmed in writing on August 28, 2015. In words or substance, Carpinelli's response to Ms. Harwood was "I want to think about it."

13. I requested my personnel file which I received on September 10. Upon inspection of my personnel file, I found a letter dated September 9, 2015 in which Carpinelli denied my request to rescind my resignation. This letter, attached as Exhibit "D," was not delivered to me.

14. Respectfully, and for the reasons set forth in the annexed memorandum of law, Carpinelli's failure to respond to and to grant my request to withdraw the letter of resignation is, under the circumstances, arbitrary and capricious and should be reversed by this Court.

15. Because of the urgency of the situation and the potentially devastating economic impact on my family if this matter is not addressed in the immediate future, I respectfully request the issuance of a Show Cause Order and the granting of a Temporary Restraining Order to continue my employment status and compensation pending the return date of that Show Cause Order and decision on the underlying Article 78 petition.

A handwritten signature in black ink, appearing to read 'Daryl Ortlieb', is written over a horizontal line.

Daryl Ortlieb, Petitioner

STATE OF NEW YORK)) ss.:
COUNTY OF LEWIS)


Daryl Ortico


Notary Public

{W0269743.1}

EXHIBIT “A”

NOTICE OF INVESTIGATION

To: Deputy Daryl R. Ortlieb

From: Sheriff Michael P. Carpinelli

Date: 8-21-15

An investigation having been commenced by the Lewis County Sheriff's Office identifies you as a potential subject of disciplinary action. Pursuant to an in accordance with the provisions of the negotiated contractual agreement between Lewis County, the Lewis County Sheriff's Office, and the CSEA, you have the right, if you elect to do so, to union representation, before any questioning and during any step in the disciplinary process.

On Monday, August 17th, 2015, at approximately 16:50, you were observed operating a marked Lewis County Sheriff's Office K9 vehicle in the parking lot on the north side of the Public Safety Building. You had come to a stop and appeared to be conversing with Dispatcher Michelle Widrick who pulled some paper documents from underneath her shirt which she had handed off to you. I then confronted you and Dispatcher Widrick in the parking lot as to the contents of the documents that I had observed. You stated that I did not have them and told me it was side work. You told me it was side work and did not want to get jammed up regarding department policy. Ultimately you refused my request to disclose the documents I had requested therefore you have violated Section 3.7 subsection 3 of the Lewis County Sheriff's Office Policy and Procedure manual that section being defined as: Insubordination to the directives of a superior.

As a condition of employment you are compelled to file a complete, accurate, and truthful report regarding this issue, **within three (3) days of receipt of this notice**. You are also compelled to answer all questions regarding the allegation completely, accurately and truthfully. Failure to report complete, accurate, and truthful information may result in termination of employment. Compelled statements are precluded for use in criminal proceedings. 1

I hereby acknowledge receipt of the notice within:

(Signature)

(Date)

I DO NOT elect to have Union Representation at this time.

X DEC

I elect to have a Union Representative.

Employee's signature

Date

Issuing Supervisor's Signature

Date

1 Garrity v State of New Jersey 385 U.S. 493,500 (1967) 10/2004

EXHIBIT “B”

On Monday August 17th I was working a b-shift at the sheriff's office. I pulled into the psb at around 1645 to look at a contractor estimate from Dispatcher Widrick. She was also working a b tour in the dispatch center. I pulled over to her car as she came out of the building and got out. She went to the back seat of her car and I walked back to my car. She then handed me the folded paper through my window and I unfolded it. It was an estimate she had received for (four) ceiling fans to be installed in her garage. I told her previously that I could get the material cheaper and install it for her. I hardly had time to look at the paper and I saw Sheriff Carpinelli coming out the front door of the psb holding his cell phone. Michelle had already taken the paper back. Sheriff Carpinelli approached my passenger side of my patrol car as I rolled the window down. He asked a few small talk questions, then went on to say how he knows employee's are upset with him right now. I confirmed that it's true and told him my reasons. Two or three weeks ago, while at the gas pumps, Sheriff Carpinelli told me that Deputy Shafner and myself would not be part of the 8 week shift change for the rest of the department. Sheriff Carpinelli asked Michelle what the paper was that she gave me and she told him exactly what it was. All three of us then went back to work. I traveled down the #4 road outside of town and was then asked on the radio by Sheriff Carpinelli to return to his office. I acknowledged and returned to the psb. I walked in the Sheriff's office and he told me to sit and asked where Michelle was. I said that I assume she is still in dispatch. He then called her and told her to report to the office as well. She arrived with Sgt Kaufman and the sheriff ordered him to leave his office. He then advised us that he has to maintain the integrity of the sheriff's office and he has the legislators breathing down his back. Therefore, he cant afford "sensitive" information getting to them. I assured the sheriff several times that at no time was the safety or security of the sheriff's office compromised in any way. I explained that this was a favor and nothing more. Sheriff Carpinelli never ordered Michelle or I to produce the paper. He phrased it as a question by stating "so your not going to show me the paper?" Each time I told him I did not have the paper. He then said that it must be in my patrol car and I advised him to look if he felt that way. Michelle told him that she did not feel comfortable showing him the paper and that it was personal business. Sheriff Carpinelli then told us that he would be working Tuesday if we felt we needed to talk to him further and we were free to leave. It was my understanding that the matter was resolved, not that a "Notice of investigation" would be conducted.

Deputy Daryl Ortlieb

EXHIBIT “C”

Poor Original

LEWIS COUNTY SHERIFF
ROCHESTER, NEW YORK 14620

PHONE 315-376-5200
FAX 315-376-5208

John E. Smith wish to resign from the Lewis County Sheriff's

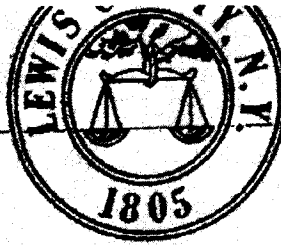
when time is depleted.

Employee Signature [Signature]

Department Head Signature [Signature]

I will allow and honor the employee to
remain on the books to allow him to keep
his accrued time

EXHIBIT “D”



LEWIS COUNTY SHERIFF'S OFFICE
P.O. BOX 233
OUTER STOWE STREET
LOWVILLE, NEW YORK 13367-0233

M. P. CARPINELLI
SHERIFF

PHONE 315-376-3511
FAX 315-376-5232

J. M. M.
UNDERS

09-09-2015

Deputy Daryl Ortlieb,

I am in receipt of your request to withdraw your statement of resignation, executed on August 26, 2015. Please allow this letter to serve as notice that your resignation remains in effect, and that your request to withdraw it is not accepted.

Thank you for your service to the Department.

Sheriff Michael P. Carpinelli

A handwritten signature in dark ink, appearing to read "M. P. Carpinelli", written over a light-colored background.

Sheriff of Lewis County