

THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY, OHIO

TODD MITCHELL,	:	O P I N I O N
Appellant,	:	
- vs -	:	CASE NOS. 2003-G-2505
	:	and 2003-G-2513
BAINBRIDGE TOWNSHIP,	:	
Appellee.	:	

Administrative Appeals from the Geauga County Court of Common Pleas, Case Nos. 02 A 000319 and 02 A 000269.

Judgment: Affirmed.

Craig W. Bashein, Bashein & Bashein Co., L.P.A., 1200 Illuminating Building, 55 Public Square, Cleveland, OH 44113, and *Paul W. Flowers*, Paul W. Flowers Co., L.P.A., Terminal Tower, 35th Floor, 50 Public Square, Cleveland, OH 44113 (For Appellant).

James A. Budzik, Johnson, Angelo & Colaluca, 1700 North Point Tower, 1001 Lakeside Avenue, Cleveland, OH 44114 (For Appellee).

DIANE V. GRENDELL, J.

{¶1} Todd Mitchell (“Mitchell”) appeals the April 11, 2003 judgment entry of the Geauga County Court of Common Pleas affirming the Bainbridge Township Board of Trustees’ (“Board”) decision to remove Mitchell as a Bainbridge Township police officer. For the reasons set forth below, we affirm the decision of the trial court in this matter.

{¶2} Mitchell was hired as a Bainbridge Township police officer in 1999. Sometime in 2000, Mitchell secretly taped a conversation with Sergeant Jack Silvis (“Sgt. Silvis”).

{¶3} On May 16, 2001, Mitchell engaged in conversation with Officer Jon Weiner (“Officer Weiner”) at the desk of Detective Robert Weir (“Det. Weir”). Mitchell inquired about a drug case that Officer Weiner was working on at the time. At some point, Officer Weiner returned a key that fit a lock to a drawer in Det. Weir’s desk, which could contain money for drug buys, evidence and/or confidential information regarding informants, to the sergeants’ office across the hall. After returning the key and upon exiting the office, Officer Weiner ran into Mitchell in the hallway outside the office.

{¶4} On Monday, May 21, 2001, Det. Weir returned to work and discovered the drawer in his desk unlocked and the key from the sergeants’ office stuck in the lock. The key was bent and required some measure of force to remove it. After determining that no one with authority to enter the desk was responsible for the incident, Lieutenant Jon Bokovitz (“Lt. Bokovitz”) and Sergeant Andy Kelley (“Sgt. Kelley”) conducted interviews of all people, including non-police personnel, that had access to the desk over the weekend preceding Det. Weir’s discovery. Everyone who was interviewed denied any involvement or knowledge of the incident.

{¶5} On May 25, 2001, Chief James Jimison (“Chief Jimison”) conducted a meeting with all officers. At this meeting, Chief Jimison stated that if no one came forward by May 29, 2001, he would have individuals undergo a polygraph examination. Since no one came forward with any details about the incident, Chief Jimison arranged to have Michael LoPresti (“LoPresti”), a polygraphist with the Ohio Bureau of Criminal

Identification and Investigation (“BCI”), conduct the examinations. LoPresti informed Chief Jimison that he would only be able to conduct nine polygraph examinations. Chief Jimison told Lt. Bokovitz to choose the nine individuals to undergo the examinations. Lt. Bokovitz choose eight officers who had the most access over the weekend before the discovery, including Mitchell, and the cleaning lady.

{¶6} Mitchell’s polygraph examination took place on June 20, 2001, at BCI. LoPresti conducted a pre-interview of each of the examinees. During the pre-interview he asked each examinee, among other things, if they suspected anyone in the incident and if they knew of other incidents where a fellow officer did something improper. Mitchell denied any knowledge in response to these inquiries.

{¶7} After conducting the pre-interview, LoPresti, utilizing the Arthur technique, conducted the polygraph examination. As part of this technique, LoPresti asked each of the examinees the following questions three times, twice in the same order and once in a different order:

{¶8} “[1.] Do you live in the United States?

{¶9} “[2.] To learn the identity of confidential informants, did you open Det. Weir’s desk drawer?

{¶10} “[3.] Do you know for sure who unlocked Det. Weir’s desk drawer?

{¶11} “[4.] Did you unlock Det. Weir’s desk drawer?

{¶12} “[5.] Besides what you told me, can you now remember ever committing even one other specific crime?

{¶13} “[6.] Did you remove Det. Weir’s desk key from the lieutenant’s office?

{¶14} “[7.] So you could sell information about drug activity, did you open Det. Weir’s desk drawer?

{¶15} “[8.] Did you get that key stuck in Det. Weir’s desk drawer?

{¶16} “[9.] Besides what you told me, can you now remember ever telling even one other specific lie?

{¶17} “[10.] Do you live in Canada?”

{¶18} LoPresti found that Mitchell was deceptive while the other eight individuals were not deceptive. LoPresti determined that Mitchell’s results had a probability of deception greater than 99 percent. Specifically, Mitchell exhibited consistent deception to the questions “Do you know for sure who unlocked Det. Weir’s desk drawer?” and “Did you get that key stuck in Det. Weir’s desk drawer?” LoPresti sought a second opinion on Mitchell’s results, which affirmed LoPresti’s conclusion that Mitchell was deceptive.

{¶19} Soon thereafter, LoPresti informed Chief Jimison of Mitchell’s results. After being informed of the results, Chief Jimison sent Det. Kelley and Lt. Bokovitz to one of Mitchell’s former employers as part of the in-depth investigation of Mitchell, wherein they interviewed George Alaimo. While no other possible suspect was subject to such an in-depth investigation, this in-depth investigation of Mitchell was warranted because Mitchell had failed his polygraph.

{¶20} At a June 27, 2001 meeting with Mitchell, Chief Jimison and Lt. Bokovitz informed Mitchell of the results of his polygraph. Prior to the interview, Mitchell waived his Garrity rights. Chief Jimison asked Mitchell if he had a tape recorder on him and whether he was recording the meeting. Mitchell acknowledged that he was taping the

meeting. Chief Jimison then instructed Mitchell to place the recording device on the table. In response to inquiries from Chief Jimison, Mitchell denied any involvement with the drawer incident. Mitchell then informed Chief Jimison that he did not want to speak without the presence of an attorney. Thus, the meeting was terminated.

{¶21} Another meeting was held on July 6, 2001. At this meeting, Mitchell was represented by counsel. Mitchell, again, denied any involvement with the drawer incident. Mitchell also denied ever secretly recording any conversations with other officers or officials.

{¶22} On July 18, 2001, Mitchell hired a second polygraphist, Edward Favre ("Favre"), to conduct another examination. In the pre-interview, Mitchell acknowledged that he was not truthful in responding to questions during the pre-interview that occurred prior to the first polygraph examination. Although Favre utilized a different technique in administering the examination, the questions asked were similar in nature. Moreover, the two questions to which Mitchell exhibited consistent deception in the first examination were repeated verbatim in this examination. Favre determined that Mitchell had "no reactions indicative of deception." Favre sought a second opinion from Richard Stimson ("Stimson"), who concurred with Favre's conclusion.

{¶23} Around this same time, both parties discussed having Mitchell take a second polygraph. On July 25, 2001, a week after Mitchell's examination with Favre, Mitchell sent a list of acceptable polygraphists to James Budzik ("Budzik"), attorney for Bainbridge Township. That list contained three names, including Favre and Stimson. After contacting Favre in order to set up the second examination and upon being

informed by Favre that he had already conducted an examination of Mitchell, Budzik informed Mitchell that a second polygraph would not be conducted.

{¶24} On August 22, 2001, Mitchell received a notice of a pre-disciplinary meeting scheduled on August 27, 2001. On August 24, 2001, Mitchell waived the pre-disciplinary meeting.

{¶25} On September 28, 2001, Chief Jimison recommended to the Board that Mitchell be terminated or be placed on long-term suspension. On October 5, 2001, Mitchell received a notice of charges and a notice of hearing date. The hearing was initially set for October 15, 2001. The October 15, 2001 hearing was subsequently continued. Mitchell was charged as follows:

{¶26} “1. On or about the weekend of May 18, 2001, you removed, without proper authorization, a key from the Lieutenant’s desk and entered Detective Robert Weir’s office and unlocked a drawer which contained confidential information and money. In doing so, the key became lodged in the lock, which required the repair of the lock.

{¶27} “2. You were interviewed on June 27, 2001 and attempted to secretly tape-record the Chief of Police and the Police Lieutenant during the interview. You previously, during the summer of 2000, secretly tape-recorded a sergeant regarding another disciplinary matter.

{¶28} “3. On or about July 6, 2001 while being interviewed, and in the presence of your counsel, you made misrepresentations and fabrications in response to Chief Jimison’s questioning regarding your actions on the weekend of May 18, 2001, your

tape-recording of other police supervisors and you otherwise hindered a lawful internal investigation.”

{¶29} On October 15, 2001, the charges were amended to add the following charge:

{¶30} “You participated in an internal investigation on June 18, 2001 which included a polygraph examination. During such internal interview and polygraph examination you lied and made misrepresentations to the polygrapher (sic). On July 18, 2001 you, at your discretion were interviewed by Polygrapher (sic) Edward Favre. At that interview, you admitted that you lied and made misrepresentations during your first polygraph examination (internal examination) conducted by Michael LoPresti.”

{¶31} A two-day disciplinary hearing commenced on November 5, 2001. On March 27, 2002, the Board found “that the charges against Mitchell have merit; that the conduct of the accused, as alleged in the charges, occurred; that Mitchell is guilty of the conduct alleged in the charges; that the recommendation of the Chief concerning termination of the accused Mitchell be adopted; and that Todd Mitchell should be and is hereby terminated from his employment and dismissed from his position.”

{¶32} Mitchell timely appealed the Board’s decision to the Geauga County Court of Common Pleas. The trial court found that, under the standard of review to which it is confined, Mitchell was properly removed from his position. Thus, on April 11, 2003, the court affirmed the Board’s decision.

{¶33} Mitchell timely appealed this decision and raises the following assignment of error:

{¶34} “The trial judge erred by refusing to find that the termination of plaintiff-appellant’s employment as a police officer was unconstitutional, illegal, arbitrary, capricious, unreasonable, and unsupported by the preponderance of the evidence.”

{¶35} In his sole assignment of error, Mitchell argues that he was denied his procedural due process rights because the Board failed to follow the “established system of progressive discipline.” Mitchell also argues that the Board’s decision is “contrary to the preponderance of the more credible evidence.”

{¶36} Although Mitchell also argues that the Board and the trial court should have examined the implications of Mitchell’s involvement in trying to organize a union for Bainbridge Township police officers, there was no evidence introduced to demonstrate that any superior officer had knowledge of the union activity. In addition, Mitchell was the *only* witness to testify regarding Chief Jimison’s and Lt. Bokovitz’s purported anti-union sentiments. Mitchell self-servingly testified that he heard about Chief Jimison’s and Lt. Bokovitz’s anti-union stance from one officer who worked at the Bainbridge Township Police Department 15 to 20 years prior to this incident. Since that former officer did not testify, the only evidence in the record is Mitchell’s hearsay testimony. Mitchell did *not* testify to any matter, other than his own “general perceptions,” that he personally experienced that would lend credence to his claim. Moreover, Mitchell testified that he did *not* feel that he was being singled out in the investigation of the drawer incident. We, therefore, agree with the trial court that this issue is irrelevant.

{¶37} A patrol officer is subject to termination “if the board of trustees of a township has reason to believe that [the] *** patrol officer *** has been guilty, in the

performance of the official duty of that *** patrol officer, *** of bribery, misfeasance, malfeasance, nonfeasance, misconduct in office, neglect of duty, gross immorality, habitual drunkenness, incompetence, or failure to obey orders given that person by the proper authority.” R.C. 505.491. In terminating a patrol officer, a board of trustees must follow “the procedures in sections 505.491 to 505.495 of the Revised Code,” R.C. 505.49(B)(3), which includes the filing of written charges, see R.C. 505.491, and conducting a hearing at the next regular meeting of the board of trustees. See R.C. 505.492; see, also, *Smith v. Fryfogle* (1982), 70 Ohio St.2d 58, 60 (“In those limited circumstances where the trustees believe the *** patrolman *** has been guilty of one of the named offenses the trustees must act in a quasi-judicial manner, conducting a due process hearing.”).

{¶38} The Bainbridge Township Police Department Disciplinary Policy (“Disciplinary Policy”) provided for “an established system of progressive discipline” with three classes of offenses, which classification depended on the nature of the offense and the disruption caused by the infraction. The Disciplinary Policy also provided that “[d]iscipline shall usually be progressive, but depending on the severity of the offense, may proceed immediately to termination.” Moreover, the Disciplinary Policy reserved “the right to fashion appropriate discipline for any infraction not specifically set forth” in the Disciplinary Policy. The Disciplinary Policy also provided for a pre-disciplinary hearing.

{¶39} In this case, since the charges filed against Mitchell were not specifically set forth in the Disciplinary Policy, the Board had the right to fashion an appropriate discipline for Mitchell’s offenses, pursuant to the Disciplinary Policy. Further, even if the

charges were specifically set forth in the Disciplinary Policy, the severity of the offenses, as discussed below, involving the integrity of a law enforcement officer, permitted the immediate termination of Mitchell. Thus, since Mitchell waived the pre-disciplinary hearing and since the Board followed the requisite procedures of R.C. 505.491 to R.C. 505.495, Mitchell was provided his due process rights. See *In re Myles* (Dec. 14, 1987), 2nd Dist. No. 10401, 1987 Ohio App. LEXIS 10120, at *22 (citation omitted) (an officer's due process rights were not violated where the officer received notice of the charges and had an opportunity to be heard at a meaningful time and in a meaningful manner).

{¶40} In an administrative appeal, the court of common pleas “may reverse the board if it finds that the board’s decision is not supported by a preponderance of reliable, probative and substantial evidence. An appeal to the court of appeals, pursuant to R.C. 2506.04, is more limited in scope and requires that court to affirm the common pleas court, unless the court of appeals finds, as a matter of law, that the decision of the common pleas court is not supported by a preponderance of reliable, probative and substantial evidence.” *Kisil v. Sandusky* (1984), 12 Ohio St.3d 30, 34. “It is incumbent on the trial court to examine the evidence. Such is not the charge of the appellate court. The appellate court is to determine only if the trial court has abused its discretion.” *Lorain City School Dist. Bd. of Edn. v. State Emp. Relations Bd.* (1988), 40 Ohio St.3d 257, 261. In so determining, we must remain cognizant of the fact that the trial court “must give due deference to the administrative resolution of evidentiary conflicts.” *Kisil*, 12 Ohio St.3d at 35, quoting *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 111.

{¶41} An abuse of discretion consists of more than an error of law or judgment. Rather, it implies that the court's attitude is unreasonable, arbitrary or unconscionable. *Berk v. Matthews* (1990), 53 Ohio St.3d 161, 169 (citation omitted). Reversal, under an abuse of discretion standard, is not warranted merely because appellate judges disagree with the trial judge or believe the trial judge erred. *Id.* Reversal is appropriate only if the abuse of discretion renders "the result *** palpably and grossly violative of fact and logic [so] that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias." *State v. Jenkins* (1984), 15 Ohio St.3d 164, 222 (citation omitted).

{¶42} In this case, there was extensive evidence submitted at the disciplinary hearing to establish each of the charges filed against Mitchell. In regards to the charge that Mitchell secretly tape-recorded a conversation with a superior officer and that Mitchell attempted to secretly tape-record his June 27, 2001 meeting with Chief Jimison and Lt. Bokovitz, Mitchell admitted to these facts at the hearing. Moreover, Officer Christopher Smith testified that Mitchell acknowledged that Mitchell recorded a superior officer in 2000, while Chief Jimison and Lt. Bokovitz testified regarding Mitchell's attempt to secretly record the June 27, 2001 meeting. While there was evidence that numerous officers utilized hidden tape recorders, the evidence demonstrated that the hidden tape recorders were used to protect the officer out in the field, rather than to record fellow officers.

{¶43} Regarding the two charges concerning Mitchell's falsehoods and misrepresentations, i.e. denying he ever secretly tape-recorded another officer and lying during his initial polygraph examination, which was part of an official internal

investigation, Mitchell also admitted to these facts. In addition, Favre testified that Mitchell informed him that he had lied during the first polygraph examination, which fact was also exhibited in Favre's report. If Mitchell were to maintain his position with the Bainbridge Township Police Department, the existence of these multiple falsehoods and misrepresentations would cause serious repercussions on any future prosecutions requiring Mitchell to testify, see *Giglio v. United States* (1972), 405 U.S. 150, 154 (citation omitted) ("[w]hen the 'reliability of a given witness may well be determinative of guilt of innocence,' nondisclosure of evidence affecting credibility" would justify a new trial), which clearly demonstrates the severe nature and the critical disruption that these multiple falsehoods and misrepresentations present.

{¶44} As to the drawer incident, the preponderance of reliable, probative and substantial evidence supports the trial court's decision. The evidence introduced at the hearing demonstrated that Mitchell was in the vicinity of the desk just days before the incident asking questions regarding a drug case. The evidence also indicated that, while the location of the key was not generally known, Mitchell had the opportunity to observe Officer Weiner replace the key in the office where it was kept. There was also testimony that Mitchell had a reputation at a previous employer for "going through people's desk." Further, Lt. Bokovitz testified that, during the June 27, 2001 meeting regarding the incident, Mitchell exhibited extremely nervous behavior. Lt. Bokovitz also testified that after Mitchell had taken the initial polygraph examination, but prior to obtaining the results, he noticed Mitchell walking around the hallway outside of his office, activity that Lt. Bokovitz had not observed prior to the incident. Finally, the

evidence demonstrates that Mitchell exhibited a probability of deception greater than 99 percent during the initial polygraph examination.

{¶45} Mitchell denied any involvement with the drawer incident. Mitchell also proffered evidence that he did not demonstrate deception in a subsequent polygraph examination. However, there was evidence introduced that the results of a second examination that utilizes the same questions, as was done in this case, could affect the results of the second examination. Moreover, there was also testimony introduced that, when there exists conflicting polygraph results, the results of the first examination “would absolutely be more accurate.” Although Mitchell introduced conflicting evidence, resolving conflicts in the evidence is within the purview of the administrative board. See *Kisil*, 12 Ohio St.3d at 35 (citation omitted) (the trial court “must give due deference to the administrative resolution of evidentiary conflicts”); see, also, *Shull v. Itani*, 11th Dist. No. 2002-L-163, 2004-Ohio-1155, at ¶36 (citations omitted) (“Where both parties present conflicting expert testimony, we are loathe to substitute our judgment regarding the credibility and persuasiveness of the evidence for that of the trier of fact.”).

{¶46} We, therefore, find that the trial court did not abuse its discretion in affirming the decision of the Board. See *Jones v. Franklin Cty. Sheriff* (1990), 52 Ohio St.3d 40, 43-45 (affirming the officer’s dismissal for her insubordination in failing to respond to questions during an internal investigation); *Myles*, 1987 Ohio App. LEXIS 10120, at *23 (upholding the officer’s termination for “serious” offenses, which included numerous instances of lying); *Hobbie v. Medina* (1985), 29 Ohio App.3d 306, 308-309 (affirming the officer’s discharge for insubordination and refusing to cooperate during an internal investigation).

{¶47} For the foregoing reasons, we hold that Mitchell's assignment of error is without merit. The decision of the Geauga County Court of Common pleas is affirmed.

JUDITH A. CHRISTLEY, J., concurs.

WILLIAM M. O'NEILL, J., dissents with a Dissenting Opinion.

WILLIAM M. O'NEILL, J., dissenting.

{¶48} I respectfully disagree with the majority. The following pertinent facts, which were presented at the administrative hearing, define the tenor of the "investigation" and were not included in the majority opinion. First, in the midst of Chief Jimison's investigation of the key incident, after Officer Mitchell was called at home and asked about the incident and denied involvement, he was then called in for a face-to-face meeting and again asked about his involvement, which he denied.

{¶49} Simultaneously, at the direction of Chief Jimison, Detective Kelley and Lieutenant Bokovitz went to John Carroll University, where Mitchell had previously worked as a campus police officer, to inquire about Mitchell's conduct. They spoke to George Alaimo who was currently employed as the Information Officer with John Carroll University, but had worked with Mitchell as his superior officer in the campus police department. Alaimo spoke favorably of Mitchell and had no negative information to disclose regarding Mitchell's conduct while he was on the force. There was no evidence presented to indicate that this type of in-depth investigation was performed on

any of the other suspects at this early point in the investigation, prior to the polygraph examinations.

{¶50} The internal investigation conducted by the police department prior to charges being issued against Mitchell reveals very little evidence in support of said charges. Notably absent was any eyewitness testimony placing Mitchell at the detective's desk or near the lieutenant's office where the key was kept or any fingerprint or other forensic evidence placing Mitchell at the scene. Moreover, there was no possible motive established as to why Mitchell would want to obtain materials from the desk, or even if he was aware what the contents of the drawer were.

{¶51} The majority lends great credence to a brief conversation Mitchell had with Officer Weiner at Detective Weir's desk approximately one week prior to the key incident. The majority also ties this into Officer Weiner seeing Mitchell in the hall outside of Detective Weir's office, presumably as evidence that Mitchell was somehow attempting to gain access to the key and subsequently the drawer. However, testimony at the trustee hearing reveals that the key was in plain view and clearly marked with a tag reading "Detective's Desk Key." There was also testimony that Detective Weir's desk was frequently used by the officers as a place to write reports or use the telephone. Thus, Mitchell's behavior did not fall outside of normal activity at the station.

{¶52} Officer Mitchell did admit that he had tape recorded Officer Silvis in the past regarding a previous incident but did not admit that on initial questioning, as he subsequently discarded the tape. Moreover, there was testimony from other officers that they had tape recorded conversations with other officers in the past. Thus, tape recording between officers was not an uncommon practice. Also, during Mitchell's

meeting with Chief Jimison and Lt. Bokovitz, Mitchell was asked if he was tape recording the conversation. When he answered in the affirmative, he was not asked to turn off the recorder but, rather, to merely place it on the table to allow for better reception, evidence that tape recording conversations between officers was not impermissible.

{¶53} Perhaps the most troubling issue summarily dismissed by the majority, as well as the trial court, is the issue of Mitchell's union organizing activity. It is important to note that a union organizing effort was underway with Local 67 of the Fraternal Order of Police ("FOP"). Mitchell testified that he initiated contact with the union sometime in January 2001. He also noted that there was a general atmosphere of displeasure among the officers regarding the department's promotion practices. Mitchell also stated that he had held a union organizing meeting at his home with approximately ten officers present. Mitchell could not say whether Chief Jimison was aware of his organizing activities but acknowledged that it was a small department where it was just a "matter of time" before the chief and lieutenant found out about the union effort. There was also testimony that a union organizing effort had been attempted in the mid 1980s and that Chief Jimison conducted a vigorous anti-union campaign.

{¶54} In its judgment entry, the trial court concluded Mitchell's appeals were "not well taken" and that Mitchell had been "properly removed for dishonesty and insubordination pursuant to Bainbridge Township Policy Manual Rules 8.1 and 8.3, and otherwise." The trial court also noted, "[a]ppellant's prior good service record is irrelevant. Defendant's claim of retaliation is both irrelevant to the Appellee's decision of April 8, 2002 and beyond the jurisdiction of the Appellee and this Court."

{¶55} The majority notes that the issue of union involvement is “irrelevant.” A trial court is authorized to review the decision of the board of trustees pursuant to R.C. 2506.04. The trial court considers the whole record and determines whether the administrative order is “unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence.”¹

{¶56} Thus, as the trial court is charged with considering the whole record, its determination that it lacks jurisdiction to consider Mitchell’s past performance and claim of retaliation are wholly inaccurate. The theory that Mitchell’s discharge for insubordination was pretextual and that his termination may have been retaliatory in nature goes to the heart of the issue of whether he was wrongfully terminated. Therefore, the trial court had to make a finding in that regard and not summarily dismiss that claim. Although the standard of review by this appellate court is more limited in scope, I believe the trial court abused its discretion in refusing to address the retaliation claim advanced by Mitchell, as it serves to demonstrate that the termination may have been unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence.

{¶57} The majority also concludes that the charges against Mitchell “were not specifically set forth in the Disciplinary Policy” and, thus, the board had the right to fashion the appropriate discipline. I respectfully disagree. In the instant case, Bainbridge Township developed and adopted formal disciplinary rules, which delineate specific procedures through which township employees, including police officers, would be disciplined for infractions. Employee handbooks, presented to employees for review upon hire, are enumerated rights which can be enforceable against employers if

1. R.C. 2506.04.

breached.² Moreover, although police officers are provided statutory protections, additional departmental rules may reach further, and provide additional rights and protective measures, as long as they are not in conflict with statutory protections.³

{¶58} The Bainbridge Township Disciplinary Rules, submitted as part of the record, provide, “[t]he [Township] and supervisors of the department should follow an established system of progressive discipline when correcting job behavior.” “Lying in an official investigation,” is expressly categorized as a Group I offense, subject to a four to fifteen-day suspension without pay, according to the rules. “Insubordination” is categorized as a Group II offense, warranting a penalty of “instruction and cautioning.”

{¶59} Thus, the trial court’s finding that Mitchell was dishonest and insubordinate, were subject only to a maximum of a short-term suspension pursuant to the township’s disciplinary rules, and not termination, as the majority asserts.

{¶60} Therefore, based on the foregoing, the trial court abused its discretion in concluding that Mitchell was properly terminated for dishonesty and insubordination and that it was without jurisdiction to hear Mitchell’s retaliation claim. Accordingly, I must dissent.

2. *Tersigni v. Gen. Tire, Inc.* (1993), 91 Ohio App.3d 757.

3. *State ex rel. Hipp v. N. Canton* (1996), 75 Ohio St.3d 221, 224.