

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS  
STATE OF MISSOURI

PATRICK HAYES,	)	
	)	
Petitioner,	)	
	)	Case No.
	)	
vs.	)	
	)	
ST. LOUIS COUNTY POLICE	)	
DEPARTMENT	)	
Serve:	)	
7900 Forsyth Blvd.	)	
St. Louis, MO 63105	)	
	)	
and	)	
	)	
ST. LOUIS COUNTY BOARD OF	)	
POLICE COMMISSIONERS,	)	
Serve:	)	
7900 Forsyth Blvd.	)	
St. Louis, MO 63105	)	
	)	
Respondent.	)	

**PETITION FOR REVIEW**

COMES NOW Petitioner, Patrick Hayes, and by and through his attorney, and for his  
Petition for Review, states as follows:

1. Petitioner Patrick Hayes is an individual and a resident of St. Louis County, State of Missouri.
2. Petitioner Patrick Hayes is and has been an employee of the St. Louis County Police Department in the rank of Lieutenant.
3. The St. Louis County Police Department exists pursuant to St. Louis County Charter.
4. The Board of Police Commissioners has oversight of the Department including

discipline of its employees. The Board derives its authority from Section 4.270 of the St. Louis County Charter.

5. This matter involves an appeal from Lt. Patrick Hayes from the May 13, 2013 disciplinary action of then St. Louis County Police Chief Timothy E. Fitch terminating his employment.

6. The Board hired a hearing officer, Michael W. Flynn, Attorney at Law, an attorney licensed to practice law in the State of Missouri, to act as the hearing officer in this matter. This was a contested hearing pursuant to Chapter 536 RSMo.

7. Substantive evidence was taken on May 6, July 6, July 7, July 8, July 9, August 24, August 25, September 1, September 2, September 9, and September 24, 2015. In attendance at all of these dates and for all of the evidence was Commissioner Laurie Westfall. Commissioner T.R. Carr was present for less than 50% of the time and was not present for the last five days of hearings. Commissioner Roland Corvington appeared twice for a total of less than three hours. Commissioner Lawrence Wooten did not appear at all.

8. On February 16, 2016, the hearing office returned an 85-page Findings of Facts and Conclusions of Law recommending the Commissioners overturn and set aside the discipline imposed on Lt. Patrick Hayes and that Lt. Patrick Hayes be restored to his former position as Lieutenant with the St. Louis County Police Department. A copy is attached as Exhibit A. As part of the hearing officers Findings of Fact, he determined that the underlying investigation was constitutionally unsound and inept. Further, the hearing officer determined that Sgt. Dan O'Neil, a central figure in this matter, was not a credible witness. The hearing officer reviewed more than 3,000 pages of testimony and determined on a witness by witness basis the credibility of each of the witnesses and determined that there was no credible evidence to sustain the

allegations against the Petitioner.

9. The Hearing Officer described Sgt. Dan O'Neil as a "pied piper of Sergeants." The Hearing Officer further described the B Platoon as one that had grown lax in good order and discipline. Command had "either lost or abdicated day to day control of matters to a clique of more senior officers who had the blessing and approval of an administratively inept, leadership challenged "pied piper of Sergeants", more prone to engaging in juvenile antics rather than role model behavior." The Hearing Officer further stated that the B Platoon was "run like a disorganized group of Cub Scouts", that the officers had become "demonstrably lazy and disinterested in performing their patrol duties", that "self-initiated police work was a low ebb", and the "officers in this clique apparently equated tenure on the job as a pass which relieved them from their responsibility to provide a full day's work for a full day's pay."

10. It was determined that the Chief Investigator in this matter was biased and incompetent. The Hearing Officer described the investigation as "tepid", "Probing and challenging questioning appeared lacking" and that the Chief Investigator had a contentious personal history with the Commander in this Precinct which colored the way in which he handled this investigation. The Hearing Officer noted that the investigator failed to interview essential witnesses. The Hearing Officer noted "considering the coterie of alleging officer inability to identify other witnesses present while Lt. Hayes allegedly made the racial inappropriate statements and the significance placed upon who made relief at which station or substation, it seems that a most fundamental investigative step would be to interview all potential witnesses to determine what was or was not said. Sadly this was not done." The Hearing Officer determined that "the conclusion to be reached with regard to the BPS investigation of Lt. Hayes is that it was incomplete and lacking an investigative rigor." The

Hearing Officer further noted “due process and fundamental fairness dictates [the Petitioner] deserves a more thorough effort than is demonstrated in this case.”

11. The Hearing Officer made a witness by witness credibility determination. Only Commissioner Westfall, who notably voted against this demotion was present for this entire hearing. The remaining Commissioners have chosen to ignore and failed to give deference to the Hearing Officer and his ability to assess the demeanor and credibility of the witnesses presented.

12. On March 16, 2016, at the request of the St. Louis County Counselor’s Office, the Board met again for the purpose of oral argument. On March 21, 2016, the Board met to deliberate this matter. Lt. Hayes was notified at 5:30 p.m. on March 21, 2016 that he was being reinstated as a Police Officer with the St. Louis County Police Department. See Exhibit B. Therefore, he was disciplined by a demotion in rank from Lieutenant to Patrolman. On March 22, 2016, counsel requested a copy of Findings of Fact and Conclusions of Law but is yet to be provided a copy. See Exhibit C. As part of the letter notification, Hayes has been ordered to report immediately to arrange a start date.

13. Petitioner has been provided an unsigned copy of the votes that were taken in the closed session of March 21, 2016 which is attached as Exhibit D.

14. Petitioner has been ordered to restart his duties as a Patrolman immediately. Petitioner requests this Court Stay and require the agency to Stay the enforcement of its Order pending the final disposition of these proceedings for review. Further, Petitioner requests that the Court set a hearing date so the Petitioner can provide notice of such a hearing. The purpose of the request is avoid irreparable harm and the public interest will not be prejudiced thereby. Such request is made pursuant to Section 536.120 RSMo.

15. Petitioner does hereby appeal the decision of the St. Louis County Board of Police Commissioners as not supported by competent and substantial evidence. Additionally, Petitioner asserts that the underlying investigation was so tainted and corrupt as to deny the Petitioner due process of law and is a violation of his Constitutional rights.

16. The Board's decision is contrary to the law and must be reversed because:

- a. The decision was not supported by competent, substantial evidence in the record sufficient to support the discipline of the Petitioner;
- b. The decision is against the overwhelming weight of the evidence in the record;
- c. The decision was arbitrary, capricious, unreasonable and unlawful in that it applied the incorrect legal standard, contains deficient Findings of Facts and Conclusions of Law and was not based on the objective evaluation of the merits or the credibility of the witnesses; and
- d. The Board abused its discretion and acted arbitrarily in disciplining the Petitioner.
- e. The underlying investigation was incompetent, corrupt, and a violation of Petitioner's due process of law. Any decision relying upon such an investigation is by its very nature arbitrary and capricious.
- f. The Board failed to give deference to the Hearing Officer's recommendations and the Hearing Officer's determination of witness credibility.

WHEREFORE, Petitioner respectfully requests this Court to vacate and reverse the

decision of the St. Louis County Police Board of Police Commissioners and reinstate the Petitioner to the rank of Lieutenant with the St. Louis County Police Department, that the Court award attorney's fees and costs in this matter and for such other and further relief as the Court may deem just and proper in the premises.

BRUNTRAGER & BILLINGS, P.C.

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