



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**PIMA COUNTY v. PIMA COUNTY LAW ENFORCEMENT MERIT
SYSTEM COUNCIL et al., CV-04-0356-PR**

PARTIES AND COUNSEL:

Petitioners: The Pima County Merit System Commission, in its capacity as administrator of the Pima County Law Enforcement Merit System, Georgia Brousseau, Michael Hellon, Herschella Horton, Rosemary Marquez, Paul Julien and James Watson (“Council”), represented by Barry M. Corey and Michelle S. Michelson, Corey & Kime.

Real Party Joseph Harvey, represented by Michael W. Storie, Piccarreta & Davis, P.C.

Respondents: Pima County and Sheriff Clarence Dupnik (“Pima County”), represented by John Gabroy, Lyle D. Aldridge and Richard Brown, Gabroy, Rollman & Boss, P.C.

FACTS:

Deputy Harvey testified in the criminal trial that he had straddled and slapped a handcuffed, shackled and wounded suspect, and had done so, in part, to elicit incriminating statements from him. He also testified that he had slapped the suspect to keep him from losing consciousness before medical personnel arrived. Sheriff Dupnik reviewed the testimony, and concluded that Harvey had used an “inappropriate interview and interrogation tactic” showing “poor judgment,” and that he had used “excessive ... force.” Dupnik and his chief deputy reviewed the incident, and concluded they did not believe Harvey slapped the suspect for medical purposes. Dupnik issued a notice of termination, which in addition to the slapping also referred to other rule and policy infractions.

On appeal to the Council, Harvey testified before a hearing officer that he had slapped the suspect only to render first aid, not to elicit an incriminating statement. Witnessing officers’ testimony supported that his actions were proper. Law enforcement supervisors testified that slapping a suspect to render first aid is not acceptable practice. Harvey did not deny the other accusations, but argued that they were not serious enough to dismiss him. He questioned the timing of his firing, nearly two years after the slapping incident. The hearing officer found Harvey’s actions in the slapping incident were done to keep the detainee conscious pending arrival of emergency medical assistance, and did not warrant discipline; for the other infractions he recommended lesser discipline. The Council unanimously adopted the hearing officer’s recommendations.

Pima County and Dupnik filed a special action challenging the Council’s decision in the superior court. It denied relief, finding the standard for reviewing the disciplinary action the Council had used was legal, and it had not abused its discretion in applying the standard.

ISSUES: The Court has accepted three issues for review (lettering is from Petitioner Pima County Merit System Commission’s petition for review):

“B. Whether A.R.S. § 38-1003, the enabling statute for County Law Enforcement Merit System Councils (‘LEMSCs’), permits the courts to dictate to the LEMSC the standard of review to be used in disciplinary appeal hearings.

“C. Whether A.R.S. § 38-1003 limits LEMSCs to a ‘deferential standard of review’ in hearing appeals from disciplinary actions.

“D. Whether an appointing officer has the burden of establishing the existence of cause for disciplinary action in merit system hearings.

Definitions:

abuse of discretion

act that may be within a court or agency’s power, but which is taken unreasonably, in disregard for the facts and circumstances

arbitrary and capricious

without factual support; lacking grounds to impose discipline

Council Rule 13-4(I): Amended Rule 13-4(I), adopted in 1999, provides:

If, after the hearing, a majority of the Council determines that there was just cause for the disciplinary action imposed, then the order shall be affirmed. If the Council determines that there was not just cause for the disciplinary action taken either: (1) because some or all of the charges were not proven to the satisfaction of the Council; and/or (2) whether or not all of the charges were proven, the disciplinary action imposed was, in the sole discretion of the Council, too severe a penalty for the conduct proven, then the order shall be revoked or modified. The Council shall have the power to direct appropriate remedial action and shall do so after taking into consideration just and equitable relief to the employee in the best interest of the County and the public.

incriminating statement

statement by a criminal suspect that, if used as evidence in the suspect’s criminal trial, would have a tendency to prove that he/she has committed a crime.

Merit System Commission

independent administrative board that hears and decides appeals from county classified service employees who have been suspended, demoted or dismissed.

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