

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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TP 08-01579

PRESENT: MARTOCHE, J.P., FAHEY, GREEN, AND PINE, JJ.

IN THE MATTER OF GEORGE LUNDY,
PETITIONER,

V

MEMORANDUM AND ORDER

CITY OF OSWEGO AND RANDOLPH BATEMAN,
MAYOR, CITY OF OSWEGO, RESPONDENTS.

D. JEFFREY GOSCH, SYRACUSE, FOR PETITIONER.

ROEMER WALLENS & MINEAUX LLP, ALBANY (ELAYNE G. GOLD OF COUNSEL), FOR
RESPONDENTS.

Proceeding pursuant to CPLR article 78 (transferred to the Appellate Division of the Supreme Court in the Fourth Judicial Department by order of the Supreme Court, Oswego County [Norman W. Seiter, Jr., J.], entered October 26, 2007) to review a determination of respondent Randolph Bateman, Mayor, City of Oswego. The determination terminated petitioner's employment with respondent City of Oswego.

It is hereby ORDERED that the determination is unanimously confirmed without costs and the petition is dismissed.

Memorandum: Petitioner commenced this CPLR article 78 proceeding seeking, inter alia, to annul the determination terminating his employment as Chief of Police for respondent City of Oswego following a hearing pursuant to Civil Service Law § 75. We conclude that the determination is supported by the requisite substantial evidence, i.e., "such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact" (*300 Gramatan Ave. Assoc. v State Div. of Human Rights*, 45 NY2d 176, 180; see CPLR 7803 [4]; *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 230-231), and we therefore may not substitute our judgment for that of respondent Mayor (see generally *Matter of Barhite v Village of Medina*, 23 AD3d 1114, 1115). We further conclude that the penalty of termination does not constitute an abuse of discretion as a matter of law, i.e., it is not " 'so disproportionate to the offense as to be shocking to one's sense of fairness' " (*Matter of Kelly v Safir*, 96 NY2d 32, 38; *Matter of Smeraldo v Rater*, 55 AD3d 1298, 1299). " 'A police force is a quasi-military organization demanding strict discipline' " (*Matter of Panek v Bennett*, 38 AD3d 1251, 1252) and, "[i]n matters concerning police discipline, 'great leeway' must be

accorded to . . . determinations concerning the appropriate punishment" (*Kelly*, 96 NY2d at 38).

Entered: February 6, 2009

JoAnn M. Wahl
Clerk of the Court