

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

1601

TP 09-01267

PRESENT: HURLBUTT, J.P., SMITH, FAHEY, AND CARNI, JJ.

IN THE MATTER OF JAMES LANGLER, PETITIONER,

V

MEMORANDUM AND ORDER

COUNTY OF CAYUGA AND DAVID S. GOULD, SHERIFF,
CAYUGA COUNTY, RESPONDENTS.

TREVETT CRISTO SALZER & ANDOLINA, P.C., ROCHESTER (DANIEL P. DEBOLT OF
COUNSEL), FOR PETITIONER.

OFFICE OF MATTHEW R. FLETCHER, CAYUGA (RANDY J. RAY 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, Cayuga County [William P. Polito, J.], entered July 31, 2008) to annul a determination of respondent County of Cayuga. The determination found petitioner guilty of disciplinary charges and terminated his employment as a lieutenant for the Cayuga County Sheriff's Department.

It is hereby ORDERED that the determination is unanimously modified on the law and the petition is granted in part by annulling that part of the determination finding petitioner guilty of charge III and by vacating the penalty and as modified the determination is confirmed without costs, and the matter is remitted to respondent County of Cayuga for further proceedings in accordance with the following Memorandum: Petitioner commenced this CPLR article 78 proceeding seeking, inter alia, to annul the determination finding him guilty of disciplinary charges and terminating his employment as a lieutenant for the Cayuga County Sheriff's Department following a hearing pursuant to Civil Service Law § 75. We reject petitioner's contention that charge II is time-barred pursuant to Civil Service Law § 75 (4). The misconduct set forth in that charge "would, if proved in a court of appropriate jurisdiction, constitute a crime," and thus the charge is not subject to the limitations period set forth in section 75 (4) (see Penal Law § 195.00 [1]). We reject petitioner's further contention that the misconduct set forth in charge V does not constitute one or more violations of Civil Service Law § 107. Charge V alleges that the misconduct described in the first four charges violated Civil Service Law § 107, and we conclude that each of those charges sufficiently alleges a violation of section 107 (4).

Judicial review of an administrative determination following a

hearing required by law is limited to whether the determination is supported by substantial evidence (see CPLR 7803 [4]; *Matter of Guerrero v Scopetta*, 53 AD3d 615; *Matter of D'Alessandro v West Hempstead Fire Dist.*, 53 AD3d 576, 577). Substantial evidence "means 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 *Matter of Lundy v City of Oswego*, 59 AD3d 954). Here, we agree with petitioner that the determination with respect to charge III, alleging that he altered a departmental shift schedule in retaliation for the support by members of that department for a political opponent of the incumbent sheriff, is not supported by substantial evidence, and we therefore modify the determination accordingly. There is no evidence in the record demonstrating that the schedule change was motivated by a desire to retaliate for political reasons (see generally *Matter of Barhite v Village of Medina*, 23 AD3d 1114, 1115). We further conclude, however, that the determination with respect to charges I, II, IV and V is supported by substantial evidence.

Inasmuch as a single penalty was imposed and the record does not establish any relation between the charges and the penalty, we further modify the determination by vacating the penalty. We remit the matter to respondent County of Cayuga for imposition of an appropriate penalty on the remaining charges.