
In the Matter of the Proceeding
Commenced by LEONARD J. KING,
Mayor of the Village of Fort
Edward,

HEARING OFFICER'S REPORT
AND RECOMMENDATIONS

-against-

JON ROBERTS Under Section 75 of
the Civil Service Law.

STATEMENT OF FACTS AND PROCEDURE

This proceeding was brought by the Village of Fort Edward against Jon Roberts, an employee of the Village of Fort Edward Police Department pursuant to Section 75 of the Civil Service Law of the State of New York. By appointment of Leonard J. King, Mayor of the Village of Fort Edward of August 19, 1982, the undersigned was appointed Hearing Officer pursuant to Section 75 of the Civil Service Law to hear the charges against Officer Roberts and the defense thereto. The following is a submission of my report and recommendations to the Village Board for its review and decision.

The hearing was held at the Village Hall located at 118 Broadway, Fort Edward, New York on September 20, 1982. Appearing for the Village was Lawrence E. Corbett, Village Attorney and for Officer Roberts, John McMahon, Esq. Also present were Jon Roberts and Mayor Leonard J. King. By letter from Mayor King of August 24, 1982 Officer Roberts was notified that charges were preferred against him alleging conduct unbecoming an officer. Upon service of the notice on Officer Roberts, he was suspended without pay for a period not to exceed thirty (30) days.

Two specific charges were cited as the basis for the disciplinary hearing alleging that the actions on the part of Officer Roberts were in violation of Articles 1.02

Exhibit C

(Unbecoming Conduct) and 1.03 (Immoral Conduct) of the Rules of Conduct of the Fort Edward Police Department as adopted by the Village Board on April 7, 1980. The charges allege two separate incidents on July 17, 1981 and August 7, 1982. Copies of the charges as related to Officer Roberts by Mayor King are attached hereto as Exhibit "A". The charges were dealt with in the order in which they were presented to Officer Roberts.

CHARGE NO. 1 - DID OFFICER ROBERTS VIOLATE
SECTION 1.02 OF THE RULES AND REGULATIONS
OF THE FORT EDWARD POLICE DEPARTMENT, AND
IF SO, WHAT RECOMMENDATION DOES THE HEARING
OFFICER HAVE REGARDING PENALTY OR PUNISHMENT?

Testimony was elicited from Officer Mitchell Suprenant to the effect that he had observed Officer Roberts on the date in question (July 17, 1981) in the presence of a female in a Police vehicle. (P. 8) The incident occurred while Officer Roberts was on duty. Statements allegedly made to Officer Suprenant by Officer Roberts did not divulge any professional reason for the presence of Donna Suddard in the Police vehicle. (P. 12) Testimony further showed that Officer Suprenant was unaware of any compelling reason (either personal or official) for the presence of Miss Suddard in the official vehicle. Officer Suprenant did state that he spoke with Officer Roberts regarding the incident but that no statement or record was made of the incident and that the matter was not further pursued. The testimony of Officer Trombley confirmed that the incident was not pursued beyond the police level and that a statement was made to Officer Roberts regarding the seriousness of the matter. (P. 27) The first written report of the July 17, 1981 incident was made on or about August 11, 1982, which I believe to be in conjunction with statements made regarding Charge No. 2.

Shortly after the initial incident of July, 1981 Officer Trombley did admonish Donna Suddard to refrain from riding in a Police car unless it was on official police

business. The testimony elicited from Donna Suddard was to the effect that she was having family problems and was observed by Officer Roberts who admonished her for being on the Village streets in violation of the curfew. She further testified that she had been experiencing family problems and that she, on prior occasions, had discussed these problems with Office Roberts. She testified that no improper advances were made toward her and that she was delivered to her home by Officer Roberts.

CHARGE NO. 2 - DID OFFICER ROBERTS VIOLATE
SECTION 1.03 OF THE RULES OF CONDUCT OF THE
FORT EDWARD POLICE DEPARTMENT BY HIS ACTIONS
OF AUGUST 7, 1982 AND IF SO, WHAT RECOMMENDA-
TION SHALL BE MADE REGARDING PENALTY OR
PUNISHMENT?

Charge No. 2 as related by the letter of Mayor King alleged immoral conduct in violation of Section 1.03 of the Rules and Regulations of the Fort Edward Police Department. Specifically, the charges alleged that Officer Roberts exhibited immoral conduct regarding an incident with a 14 year old minor (Amy Gorham) while on duty. In my opinion the most revealing testimony elicited was that testimony of Amy Gorham. Miss Gorham admitted that she had had alcoholic beverages on the night in question (P. 61) and further admitted on direct examination in response to a question posed by the Hearing Officer that Officer Roberts did not kiss her. (PP. 93 and 94)

The statement was basically to the effect that Officer Roberts was aware that she had been drinking (P. 61) and offered gum to Amy in order to mask the smell of alcohol on Amy's breath. She stated that she unwrapped the gum, put it in her mouth and further stated she was afraid her mother would find out that she had been drinking beer. The testimony of the other girls involved with the August, 1982 incident, to wit: Karen Stimpson and Patricia Strain was to the effect that Karen Stimpson was not at the Police car at the time the incident was alleged to have occurred. The testimony of Patricia Strain was somewhat confused in that she stated that Amy had told her that Officer

Roberts had not kissed her but from her vantage point she saw Officer Roberts kiss Amy. This is in spite of the fact that her view into the car was blocked by a portion of the car itself. (PP. 73 and 74)

CONCLUSIONS AND RECOMMENDATIONS

WAS THE CONDUCT OF OFFICER ROBERTS ON THE
OCCASIONS IN QUESTION PROVEN WITH SUBSTANTIAL
CERTAINTY AND IF SO WHAT IS THE RECOMMENDED
PENALTY OR PUNISHMENT?

Section 75 of the Civil Service Law provides that the burden of proving the incompetency or misconduct of the individual involved shall be upon the person alleging the same. The standard to be applied in this matter is that of substantial evidence or a preponderance of the evidence (See Foran vs. Murphy, 73 M2d 486, 342 N.Y.S. 2d p. 4). A full hearing was afforded Officer Roberts wherein he had full opportunity to examine witnesses against him and to summon witnesses in his behalf.

With reference to Charge No. 1, the Rules of Conduct of the Fort Edward Police Department do not state any prohibition against having private individuals in a Police vehicle while the officer is on duty. As stated by Officer Suprenant, it is the policy of the Department to have individuals in the car only when official Police business is involved. (P. 18) The main issue regarding Charge No. 1 is whether Officer Roberts' actions in counselling the girl with family problems and ultimately giving her a ride home was of such a nature as to raise it to the level of conduct unbecoming an officer. Both Officers Trombley and Suprenant testified that they were unaware of the reason for Miss Suddard's presence in the vehicle. Donna Suddard, however, testified that she had family problems and on prior occasions had discussed these family problems with Officer Roberts. Officer Suprenant testified that usual Police business does include "domestic"

problems and "runaway children". (P.17) The sworn testimony of Donna Suddard was to the effect that she was considering running away from home and that after her discussion with Officer Roberts, had changed her mind.

There does remain the unanswered question as to why no reason was given to either Officer Suprenant or Officer Trombley by Officer Roberts when questioned about the incident.

It appears that Officer Roberts failed to use his judgment in an appropriate manner in handling the situation with Donna Suddard. If the results of his counseling of Miss Suddard regarding her family problems were successful, there would not appear to be a compelling reason why Officer Roberts would not have so reported this to his superiors.

The phrase "Conduct Unbecoming an Officer" is a subjective standard and is not one that is readily susceptible to a yes or no answer. The testimony elicited by the Village does not show with substantial certainty that the conduct of Officer Roberts on July 17, 1981 was severe enough to warrant a dismissal of Officer Roberts from the Police Force. Officer Roberts has erred in his judgment in handling the situation if it was in fact a domestic matter on which he was counseling Donna Suddard.

It is the opinion of the Hearing Officer that Officer Roberts' conduct does show that he failed to respond appropriately to his superiors when questioned about Miss Suddard's presence in the police vehicle. In his position as a police officer, Officer Roberts must answer not only to his superiors but also to the community which he serves. The community and the Police Department have a right to rely on an officer's professional judgment when on duty. Further, Officer Roberts has a professional responsibility to himself to assure that his activities do not interfere with or otherwise reflect negatively on his professional future.

It is my recommendation that the charge against Officer Roberts with relation to the incident in July of 1981, be sustained. It is further my recommendation that a written reprimand is warranted concerning this charge, and that the reprimand is to be placed in Officer Roberts' personnel file. In view of the fact that there was no Police Chief at the time of the incident nor was there a clearly defined chain of command within the Department, I feel that a reprimand is the appropriate penalty.

With reference to Charge No. 2, there is conflicting testimony regarding the incident. The question again remains as to whether the conduct of Officer Roberts was of such a degree that it did involve moral turpitude thereby impairing his ability to perform as a law enforcement officer. In this instance, however, Amy Gorham stated that Officer Roberts did not kiss her and that she did not have the impression that he was going to kiss her. I find that the charge relating to the incident of August 7, 1982 is not proven with substantial certainty to be immoral conduct. Therefore, I recommend that the charges against Officer Roberts on Charge No. 2 be dismissed. In reviewing the memorandum filed by the attorneys for the respective parties, it is my opinion that there is concurrence that this specific charge be dismissed in total.

Respectfully submitted,

BERNICE McPHILLIPS, Hearing Officer

RESOLUTION

MOTION BY Trustee Smatko

SECONDED BY Trustee Farnsworth

WHEREAS a disciplinary hearing was held on September 20, 1982 by Bernice McPhillips, Hearing Officer, at the Village Hall to determine if Officer Jon Roberts had violated the Rules and Regulations of the Fort Edward Police Department, specifically Section 1.02-Unbecoming Conduct, and

WHEREAS the Hearing Officer has filed her report and recommendations regarding the disciplinary hearing and,

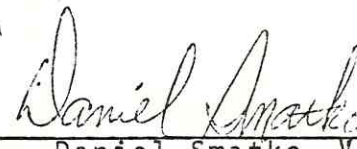
WHEREAS the said Hearing Officer has recommended that Officer Jon Roberts be found guilty of unbecoming conduct on July 17, 1981 and

WHEREAS said Hearing Officer further recommends that a written reprimand is warranted and that the reprimand is to be placed in Officer Roberts employment record and

WHEREAS Officer Roberts pay was suspended for a period of thirty (30) days,

NOW, THEREFORE, BE IT RESOLVED That Officer Jon Roberts be found guilty of violating Section 1.02-Unbecoming Conduct- of the Rules and Regulations of the Fort Edward Police Department and that the penalty against said Officer Jon Roberts consist of a written reprimand and that the said letter of reprimand be made a part of his employment record and that his loss of pay during the period of his suspension be considered as part of the penalty against him.

ADOPTED by the Board of Trustees of the Village of Fort Edward on the 1st day of November, 1982.



Daniel Smatko, Village Clerk

Exhibit D

MAYOR
LEONARD J. KING

TRUSTEES
RICHARD I. FORTE
DONALD D. ELLIS
BRENT FARNSWORTH
ANDREW J. SMATKO

CLERK AND TREASURER
DANIEL J. SMATKO



118 Broadway
Post Office Box 345
Phone (518) 747-4023
Fort Edward, N. Y.
12828

November 9, 1982

Patrolman Jon Roberts
31 Elm Street
Hudson Falls, New York

Dear John,

On September 20, 1982, a hearing was held at the village hall concerning charges brought against you of Immoral Conduct and Unbecoming Conduct under the Rules and Regulations of the Fort Edward Police Department.

The hearing was conducted by Miss Bernice McPhillips of Glens Falls.

Her recommendation was to find you guilty of Unbecoming Conduct and dismissed the charge of Immoral Conduct.

The village board has agreed with her findings and will enter this letter in your records and also as part of the penalty, finds that your suspension of pay for 30 days be upheld.


Leonard J. King, Mayor

CC: Leonard King
Jon Roberts

Exhibit E