

STATE OF OHIO
COUNTY OF CUYAHOGA

) IN THE COURT OF COMMON PLEAS
) SS.
) Civil Case No. 496176

HERMAN WEAVER

Plaintiff,

vs.

CITY OF CLEVELAND

Defendant.

) **JOURNAL ENTRY AND**
) **OPINION**

Kathleen Ann Sutula, J:

IT IS SO ORDERED:

This case comes before the Court on an administrative appeal pursuant to O.R.C. §2506.01. Appellant Herman Weaver (“Weaver”) is appealing a ten-day suspension he received from his employer, the City of Cleveland (“Cleveland”).

The basis for the suspension was an incident between Weaver and a fellow employee on February 15, 2003. On February 26, Cleveland notified Weaver that a “pre-disciplinary conference” was scheduled for March 5. Weaver indicated that he would attend, and that he wanted union representation present for the conference.

Cleveland did hold the conference, and Weaver’s supervisors explained to him that his conduct was unacceptable workplace behavior. In addition, the supervisors provided Weaver a copy of his accuser’s statement. The supervisor, however, did not permit Weaver’s attorney to cross-examine Weaver’s accuser and the accuser’s witness. The only other type of evidence submitted was a sworn statement from Weaver’s witness.

A day after the pre-disciplinary conference, Cleveland notified Weaver that he was suspended for ten working days, effective March 10. Weaver subsequently filed this action with the Court, and Cleveland has filed a motion to dismiss for want of jurisdiction.

I. Jurisdiction under O.R.C. §2506.01

Cleveland, as a charter city, has charter rules governing civil service employment. *Jacomin v. Cleveland* (Cuyahoga 1990), 70 Ohio App.3d 163. Where the charter provisions are silent, codified state law applies in situations involving civil servants. *Id.*, 70 Ohio App.3d 163. If the charter rules and state law are silent as to the right of appeal, a decision made by an administrative body can be appealed to the courts. *Nuspl v. City of Akron* (1991), 61 Ohio St.3d 511. An appellant, however, can only appeal under Ohio Revised Code §2506.01 if the party has a right to a quasi-judicial proceeding. *M.J. Kelley Co. v. Cleveland* (1972), 32 Ohio St.2d 150.

In *M.J. Kelley*, the Ohio Supreme Court stated at paragraph two of the syllabus that a quasi-judicial hearing requires notice, a hearing, and the ability to present evidence. *Id.*, 32 Ohio St.2d 150. Basically, the quasi-judicial hearing should resemble a court proceeding. *Union Title Co. v. State Bd. of Edn.* (1990), 51 Ohio St.3d 189, 191.

In a 1994 case, the Eighth District Court of Appeals held that an investigation in which the appellant participated did not amount to a quasi-judicial hearing. *Ramacciatti v. City of Cleveland* (Cuyahoga 1994), No. 66678, 1994 WL 326238. As a basis for this holding, the court noted (1) the lack of official notice of a hearing, (2) the appellant's inability to subpoena and cross examine witnesses, and (3) the fact that no testimony was proffered under oath. *Id.*

As to the case presently before the Court, Weaver had no right to a quasi-judicial hearing. First, Cleveland's civil service rules contemplate a pre-disciplinary conference as the first line of discipline. Although Weaver had a right to such a conference, the nature of a pre-disciplinary conference does not mean that Weaver had a right to a quasi-judicial hearing. According to the rules promulgated by Cleveland, Weaver would have this right only if his suspension exceeded ten days.

Furthermore, even assuming that Weaver had a right to a quasi-judicial hearing, such a hearing did not take place. At the pre-disciplinary conference, few of the trappings of a judicial proceeding transpired. Although Weaver had notice, he could not subpoena witnesses, nor could he cross-examine them, and there is no evidence that sworn testimony was given. Finally, the fact that the entire record of the pre-disciplinary conference is the March 6 letter informing Weaver that he was suspended, it is likely that the pre-disciplinary conference was quite informal and, therefore, does not rise to the level of a quasi-judicial proceeding.

Since Weaver did not have a right to a quasi-judicial proceeding, and even if he did have the right, such a proceeding was not held, the Court lacks jurisdiction to hear an appeal brought pursuant to §2506.01.

It is, therefore, ORDERED, ADJUDGED, and DECREED:

For the reasons previously stated, Cleveland's Motion to Dismiss is well taken. Upon examining the complaint and determining whether the factual allegations set forth a cause of action that falls within the Court's jurisdiction, the Court holds that the facts asserted by Weaver raises claims that are outside the Court's jurisdiction and for which

the Court cannot provide relief. For good cause shown, Cleveland's Motion to Dismiss is granted, and the case is dismissed.

Costs to Appellant. FINAL.

DATE: August ____, 2003

KATHLEEN ANN SUTULA, JUDGE

CERTIFICATE OF SERVICE

A copy of the foregoing Journal Entry and Opinion has been sent via regular U.S.

mail on this _____ day of August, 2003, to the following:

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