

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D18919
O/prt

_____AD3d_____

Argued - February 20, 2007

ROBERT A. SPOLZINO, J.P.
DAVID S. RITTER
HOWARD MILLER
MARK C. DILLON, JJ.

2006-05225

DECISION & JUDGMENT

In the Matter of David Torrance, petitioner, v
Joseph A. Stout, etc., et al., respondents.

(Index No. 06-05760)

James M. Rose, White Plains, N.Y., for petitioner.

Charlene M. Indelicato, County Attorney, White Plains, N.Y. (Stacey Dolgin-Kmetz,
Thomas G. Gardiner, and Martin Gleeson of counsel), for respondents.

Proceeding pursuant to CPLR article 78 to review a determination of the respondent Commissioner of the Westchester County Department of Parks, Recreation and Conservation, dated February 15, 2006, which, after a hearing, found the petitioner guilty of misconduct and demoted him from the position of Park Foreman to the position of Maintenance Laborer.

ADJUDGED that the determination is confirmed, the petition is denied, and the proceeding is dismissed on the merits, with costs.

Contrary to the petitioner's contention, the meeting he was directed to attend by his supervisor was not a disciplinary hearing within the meaning of Civil Service Law § 75 (*see Matter of Cassone v Westchester County Health Care Corp.*, 5 AD3d 764; *Matter of Alpert v Grecco*, 73 AD2d 710; *Donofrio v Hastings*, 54 AD2d 1110; *Matter of Ector v Salzmann*, 54 AD2d 1017). Thus, he was not entitled to have a union representative present at the meeting (*see Matter of Ector v Salzmann*, 54 AD2d 1017).

The determination that the petitioner was guilty of misconduct is supported by substantial evidence and, therefore, may not be set aside (*see 300 Gramatan Ave. Assoc. v State Div. of Human Rights*, 45 NY2d 176, 179; *Matter of Pell v Board of Educ. of Union Free School Dist.*

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No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 NY2d 222; Matter of Douglas v Lannert, 272 AD2d 327). Further, the penalty of demotion must be sustained as it is not shocking to one's sense of fairness (*see Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 NY2d 222; Matter of Kreisler v New York City Tr. Auth., 2 AD3d 856, 857, aff'd 2 NY3d 775; Matter of Harlander-Insero v Glass, 228 AD2d 504*).

SPOLZINO, J.P., RITTER, MILLER and DILLON, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court