

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST)
POLICE OFFICER WILLIAM WHELEHAN,) **No. 11 PB 2768**
STAR No. 7949, DEPARTMENT OF POLICE,)
CITY OF CHICAGO,)
RESPONDENT.) **(CR No. 1020122)**

MEMORANDUM AND ORDER

On June 8, 2011, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer William Whelehan, Star No. 7949, recommending that the he be discharged from the Chicago Police Department for violating several Rules of Conduct (Police Board Case No. 11 PB 2753, hereinafter sometimes referred to as “Whelehan I”).

On September 26, 2011, the Superintendent filed with the Police Board a second set of charges against Whelehan recommending that he be discharged from the Chicago Police Department for violating several Rules of Conduct (Police Board Case No. 11 PB 2768, hereinafter sometimes referred to as “Whelehan II”). The charges in the two cases are not related.

On October 20, 2011, the Police Board decided Whelehan I. The Board found Whelehan guilty of all charges and ordered that he be discharged from his position as a police officer with the Department of Police, and from the services of the City of Chicago. On October 27, 2011, the Board issued its written findings and decision, and the Executive Director (Secretary) of the Board notified the parties of the Board’s action by forwarding the findings and decision to the Superintendent and by sending a copy of the findings and decision to Whelehan.

The question now is whether the Police Board has jurisdiction to hear and decide Whelehan II.

Section 2-84-030 of the Municipal Code of Chicago grants the Police Board the following power:

To serve as a board to hear disciplinary actions for which a suspension for more than the 30 days expressly reserved to the superintendent is recommended, or for removal or discharge involving *officers and employees of the police department* in the classified civil service of the city. (Emphasis added.)

The Superintendent opposes dismissing Whelehan II on jurisdictional grounds, stating that Whelehan's status with the Chicago Police Department is "30 day suspension pending" because Whelehan I is currently pending before the Circuit Court of Cook County (Whelehan filed a timely petition for administrative review of the Board's findings and decision in Whelehan I). The Superintendent asserts that the Board's October 20, 2011, order discharging Whelehan is not a final and appealable order because the Circuit Court could remand Whelehan I to the Board for further action, therefore causing a potential change in the result.

The Board finds the Superintendent's reasoning unpersuasive. The Board's *Rules of Procedure*, established pursuant to Section 2-84-030 of the Municipal Code of Chicago, state that:

The Secretary of the Board shall forward the findings and decision of the Board to the Superintendent for enforcement of the Board's action. If the findings and decision is such that the respondent is guilty of the charges filed and removal, discharge or suspension is ordered, *such order shall become effective forthwith*. (Section III-J; emphasis added.)

In addition, the Municipal Code states:

The findings and decision of the police board, including an explanation of those findings and decision, when approved by said board, shall be certified to the superintendent and *shall forthwith be enforced by said superintendent*. (Section 2-84-030; emphasis added.)

Pursuant to the above provisions, the Board's October 20, 2011, order discharging Whelehan became effective on October 27, 2011. The Board has received no indication that the Circuit

Police Board Case No. 11 PB 2768
Police Officer William Whelehan
Memorandum and Order

Court of Cook County has stayed this order. The Board therefore determines that Whelehan is currently not an officer or employee of the Chicago Police Department, and that, pursuant to Section 2-84-030 of the Municipal Code of Chicago, the Board has no power to hear or decide Whelehan II.

The charges filed in Whelehan II shall therefore be dismissed without prejudice. The Superintendent may re-file these charges if a court reverses or vacates the Board's order in Whelehan I or remands Whelehan I for the Board to impose a penalty less than discharge.

Police Board Case No. 11 PB 2768
Police Officer William Whelehan
Memorandum and Order

POLICE BOARD ORDER

IT IS HEREBY ORDERED that the charges filed against William Whelehan in Police Board Case No. 11 PB 2768 are **dismissed without prejudice**.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 16th DAY OF FEBRUARY, 2012.

/s/ Demetrius E. Carney

/s/ Scott J. Davis

/s/ Melissa M. Ballate

/s/ William F. Conlon

/s/ Ghian Foreman

/s/ Rita A. Fry

/s/ Susan L. McKeever

/s/ Johnny L. Miller

/s/ Elisa Rodriguez

Attested by:

/s/ Max A. Caproni
Executive Director
Police Board

Police Board Case No. 11 PB 2768
Police Officer William Whelehan
Memorandum and Order

DISSENT

The following members of the Police Board hereby dissent from the Order of the majority of the Board.

[None]

RECEIVED A COPY OF

THE FOREGOING COMMUNICATION

THIS ____ DAY OF _____, 2012.

SUPERINTENDENT OF POLICE