2012 IL App (2d) 110332-U
No. 2-11-0332
Order filed February 10, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

LEONARDO AVILES,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 10-MR-912
	)	
THE CIVIL SERVICE COMMISSION OF THE CITY OF WEST CHICAGO, and its members, JUAN CHAVEZ, Chairperson, PAUL DOWDLE and EVELYN CANABAL, Commission Members, and DONALD J. GONCHER, Chief of Police,	)	
	)	Honorable
	)	Terence M. Sheen,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices McLaren and Burke concurred in the judgment.

ORDER

Held: (1) The Commission's determination regarding plaintiff's misconduct, namely hosting movie nights and engaging in intimidating and disrespectful confrontations with subordinates, in violation of the department's general orders, was not against the manifest weight of the evidence.
(2) The Commission's decision to discharge plaintiff was supported by the severity of plaintiff's misconduct, was not arbitrary or unreasonable, and was related to plaintiff's service with the department such that the law and sound public opinion would recognize it as good cause for discharge.

¶ 1 Plaintiff, Leonardo Aviles, formerly a sergeant with the West Chicago police department, appeals the judgment of the circuit court of Du Page County, affirming the decision of defendants, the Civil Service Commission of the City of West Chicago (Commission), its members Juan Chavez (in his official capacity as chairperson), Paul Dowdle (in his official capacity as a member), and Evelyn Canabal (in her official capacity as a member), and the police chief, Donald J. Goncher (in his official capacity), to terminate plaintiff's employment based on the facts that he held two "movie nights" for the personnel under his supervision and entered into disrespectful and intimidating conversations with subordinates while running an independent and unauthorized investigation concerning who "ratted him out." Plaintiff contends that the Commission erred in finding him guilty of the charged misconduct, that the evidence did not support the Commission's decision to terminate plaintiff's employment, and that the trial court erred in failing to remand the matter to the Commission for the imposition of a lesser disciplinary sanction than termination. We confirm the Commission's decision.

¶ 2 Following an internal investigation, Goncher, the chief of the West Chicago police department, filed a complaint with the Commission seeking to terminate plaintiff's employment. The complaint consisted of thirteen counts alleging violations of the department's general orders, based on the following conduct. It was alleged that, during the midnight shift on the evenings of October 1-2 and 2-3, 2009, plaintiff hosted or allowed a movie night to take place during which the officers of the midnight shift watched movies and ate popcorn and sandwiches, some of which plaintiff provided, instead of patrolling. It was also alleged that, following the two movie nights, plaintiff confronted and questioned three subordinate officers under his command and specifically asked them if they had been the one to "rat him out" to departmental superiors concerning the movie

nights. Finally, it was also alleged that plaintiff had been untruthful when questioned about his activities concerning the movie nights, in violation of his obligation to provide truthful answers, pursuant to the department's general orders, to the investigators investigating the movie nights. Plaintiff filed an answer admitting that the movie nights had occurred and that the participants had been served popcorn on the first night and had brought in White Castle sandwiches on the second night.

¶ 3 The Commission decided to bifurcate the proceedings, beginning with a hearing on plaintiff's guilt or innocence of the conduct alleged in the disciplinary charges, and concluding with an aggravation and mitigation hearing, if necessary. The matter proceeded to the guilt or innocence hearing. There, plaintiff stipulated that he organized and presented the first movie night and allowed the second. In addition, the parties further stipulated to the evidentiary use of the transcripts of interviews of the officers who participated in the investigation.

¶ 4 Commander Spencer Kroning was interviewed in the department's internal investigation into plaintiff's conduct. He stated that Officer Rich Langelan talked to him in his office on the Wednesday preceding Kroning's investigative interview and asked whether there would be an opening in the Street Ops Unit. Kroning remarked that it was the third time that Langelan had asked about a transfer. Kroning noted that he and Langelan were friends, and he thought it was unusual for Langelan to keep asking him about an opening. Kroning asked Langelan if there were some urgency about transferring from his current shift. Langelan told Kroning that plaintiff had recently accused him of ratting him out about the occurrence of movie nights on the midnight shift. Kroning believed that Langelan was upset. Kroning related that Langelan told him that he had been accused of saying something he did not say and that he believed he was being accused because Langelan

usually did not participate in group functions, but only attended roll call and then left to patrol. Langelan further told Kroning that he was very uncomfortable around plaintiff, and this was one of the reasons he was interested in transferring to another unit. Langelan also mentioned to Kroning that he was becoming increasingly distrustful of working for plaintiff and wanted to get off of the shift so he could work without worrying about retribution from plaintiff. Langelan also told Kroning that, since the event, Langelan had been treated differently by plaintiff and another officer, but he did not go into any detail. Kroning stated that he drafted a memorandum of his meeting with Langelan and submitted to his superior, Deputy Chief Bruce Malkin.

¶ 5 Officer Michael Cummings, who was assigned to the midnight shift, was interviewed as a part of the investigation into the movie nights (based on his descriptions, it appears to be the second movie night). Cummings admitted that he participated in one of the movie nights. Cummings explained that, when he came to work that night, plaintiff, during roll call, announced that there was going to be training video that evening. Plaintiff told the shift to go out on patrol, but then to return at 2 a.m. to see the video. Cummings stated that, when he came back at 2 a.m., a movie called "Pride and Glory" was shown. Cummings stated that Officers Reavley, Zurick, and Perry, along with plaintiff were present for the movie. Cummings stated that they stayed for a full two hours and watched the entirety of the movie. Afterwards, they discussed what they liked and disliked about the movie. Cummings noted that someone brought in White Castle sandwiches, but no popcorn had been served. Cummings was unable to recall what plaintiff said about the reason for showing the movie; he believed that plaintiff claimed it was a training video, but plaintiff also mentioned that the shift had been doing a good job. Cummings noted that Langelan, who was working that evening, did not participate in watching the movie.

¶ 6 Cummings stated that it was the only time since he had started with the department that he had participated in a movie night. Cummings agreed that coming back to watch the video sounded "iffy," but he did not know that it was not going to be an actual training video until he came back and started watching. Cummings explained that he did not expressly question the program at the time because his supervisor had mentioned it and because similar events, such as barbecues, had been held on holidays and the officers participating would take two or three hours at those events. Likewise, lunches had been provided at which the officers took more than their allotted 30 minutes.

¶ 7 Cummings also related that he had heard that plaintiff had talked with Officers Winton and Reavley in the locker room about whether they had discussed the movie nights with anyone else. Cummings had heard that Winton told plaintiff that Reavley ratted him out, but Winton was joking. Cummings stated that the had not heard that anyone in the department was being referred to as a "rat" as a result of the movie nights. Cummings also stated that Plaintiff had not given a reason why the movie was to be shown at 2 a.m., and plaintiff had not told the officers attending the movie not to mention the movie night to anyone.

¶ 8 Officer Meagan Perry of the midnight shift was interviewed as part of the movie-nights investigation. She stated that, at roll call on the first movie night, plaintiff announced that he had a training video, that it was raining out, and that they had to come back and watch the video. Perry identified the video as the movie, "Street Kings," which involved a story about the police. After the movie was over, plaintiff led a discussion about the things in the movie that they should not do or that they could learn from. Perry admitted that they watched the entire video and there was popcorn from the vending machine and baked goods, possibly donuts. Regarding the second movie night, Perry stated that plaintiff announced the showing of the video at the end of the roll call.

¶ 9 Perry stated that this was the first time since beginning with the department that she had been offered or participated in a movie night, and she understood it was being presented as a reward for the shift's hard work, plus it was a rainy night. When Perry returned to work after her days off following the movie nights, Officers Reavley and Winton gave her a "heads up" that plaintiff was "pissed off" because somebody had "ratted him out" over the movie nights. Perry gleaned from Winton and Reavley that their exchange with plaintiff had occurred in the locker room. Perry was not bothered by the movie nights at the time, because they were presented as a reward for the shift's hard work and because plaintiff had indicated that he would take any calls that came in during the movie.

¶ 10 Officer Rick Sauseda of the midnight shift was interviewed about the movie nights. He stated that, when he came into the roll call on the first movie night, plaintiff announced that he was showing a movie for training purposes after roll call ended. Sauseda stated that the first night's movie was "Street Kings." Following the movie, plaintiff led a question and answer session about the events in the movie that could apply to their police work. Sauseda believed that, on the first movie night, the shift did not leave the station after roll call.

¶ 11 Sauseda stated that, on the second movie night the next day, it was raining again, and plaintiff announced that the shift should return to the station at 2 a.m. Sauseda did not recall whether plaintiff provided a reason for the shift's return. Sauseda believed that plaintiff placed the movie into the player on the second night. Sauseda also stated that the popcorn machine was set up and White Castle sandwiches were brought in. The second night's movie was "Pride and Glory." Sauseda was unsure whether on both nights plaintiff told the shift to come back in after beginning their patrols, and he believed the shift may not have left on the second night, but he did not recall whether plaintiff

provided a reason for them to come back. Sauseda believed that plaintiff knew that there would be a movie shown on the second night because the popcorn machine was already set up.

¶ 12 Sauseda noted that he had heard that plaintiff was upset a few days after the movie nights. Sauseda explained that, because it was his scheduled day off so he was not at the department, he did not know exactly why plaintiff was upset.

¶ 13 Officer Justin Wienrank of the midnight shift was interviewed as part of the investigation in the movie nights. Wienrank stated that the movies were shown on consecutive days. The first night was a surprise. Wienrank stated that plaintiff explained that the movie night was a reward for doing a good job on the road, for which the shift deserved a snack and a movie. Wienrank stated that it was a cop movie called "Street Kings." The movie was introduced as a training video, but Wienrank recalled that plaintiff was sarcastic when he said that.

¶ 14 After the movie on the first night, Wienrank, plaintiff, and two other officers got into a discussion about cop movies, and Wienrank mentioned he had a copy of "Pride and Glory," another cop movie. Wienrank was encouraged to bring it in on the next night, but not necessarily to watch it during the shift. Wienrank stated that he brought in the movie on the next night, put it on the front desk, but could not recall who placed the movie into the player. Wienrank stated that there may have been some discussion about coming back to the station to watch the movie during the roll call. On the second night, Wienrank stated that plaintiff did not tell everybody to come back to watch another movie; nevertheless, everybody "kind of came back" on their own, and plaintiff did nothing to stop it. Wienrank stated that, on the other hand, plaintiff may have been aware that the movie was going to be shown as soon as the shift came back because plaintiff sat in with them.

¶ 15 Wienrank stated that he had heard from somebody in the afternoon shift that Langelan had ratted out the midnight shift. Wienrank believed that plaintiff seemed a little upset about being "ratted out" for the movie nights because it was something he told Wienrank that he was doing to reward the shift.

¶ 16 Officer Robert Winton of the midnight shift was interviewed as a part of the department's investigation. He stated that he was not present on either of the movie nights because he had been on his scheduled days off, but he had heard about them. Winton stated that he had heard the movies were not training material, but Hollywood entertainment movies. Winton stated that he first heard about the movie nights during roll call when he returned to duty when Langelan made a comment about them. Sauseda then told him that Langelan had ratted out plaintiff for bringing a movie in and that Langelan had mentioned it during a roll call at which Sergeant Hall was present.

¶ 17 Winton stated that when plaintiff came back from his days off, he learned about the disclosure of the movie nights, and he was upset. In the locker room about a week later, plaintiff mentioned to Winton and Officer Reavley that someone had informed the administration about the movie nights. Winton stated that he jokingly blamed Reavley. Winton noted that he said this before he knew that plaintiff was upset about it. Winton stated that plaintiff did not come out and say it, but he gave Winton the impression that plaintiff believed that Langelan told on him.

¶ 18 Officer John Zurick of the midnight shift was also interviewed as a part of the department's investigation. Zurick stated that he had been present only on the movie night on which "Street Kings" was shown (the first night). Zurick understood, based on plaintiff's comments after roll call, that plaintiff was showing the movie in appreciation and as a reward for the shift's hard work. After the movie, there was a question and answer session. Zurick at first thought that plaintiff was joking

about the question and answer session. Zurick noted that refreshments were available, including donuts, coffee, and popcorn from the Railroad Days popcorn machine. Zurick stated that, before his investigative interview, he had not heard that any of the shift members talked about the movie nights. When he was asked about whether movie nights were the right thing to do, Zurick noted that, over the years, other supervisors offered barbecues on holidays, but plaintiff could not afford to host a barbecue. Zurick stated that, once in a while, there had to be events to promote bonding or camaraderie among the members of a shift.

¶ 19 Zurick told the interviewers that he had not heard that anyone had been labeled as a "rat" as a result of the disclosure of the movie nights. Zurick had, however, heard that somebody had said something about it at a roll call and the news of the movie nights spread through the "grapevine." Zurick had heard that the officer who mentioned it at roll call was Langelan.

¶ 20 In addition to the foregoing interviews, the parties also stipulated to use the interviews of Sergeants Eugene Samuel and William Hall in lieu of their live testimony. Samuel stated that he was one of the regular supervisors of the midnight shift at all relevant times. Samuel had been a sergeant for 10 years. He learned about the movie nights from Langelan, who came to talk to him before one of the roll calls. Langelan told Samuel that plaintiff approached him and called him a "rat" for disclosing the movie nights. Plaintiff also told Langelan that he had gotten into trouble as a result. Langelan was upset about being accused of being a rat by his direct supervisor. Langelan and Samuel realized that neither Goncher nor the deputy chiefs could have spoken to plaintiff about the movie nights because they were out of the office. Samuel agreed that he was taken aback by the idea that a sergeant would host a movie night as well as by Langelan's being upset about it.

¶ 21 Samuel stated that he had rewarded his shifts for doing a good job by hosting a barbecue for their lunch. When he barbecued, the officers of the shift would come in individually to eat, they would finish lunch, and then they would resume patrolling. Samuel stated that the officers would not all come in at the same time, and they would not take two or three hours to eat. Samuel believed that a movie night was something different from a barbecue lunch, and he stated that, if plaintiff had asked his advice about hosting a movie night, Samuel would have discourage him due to the length of time the shift would remain at the station.

¶ 22 Hall stated that he had been employed by the department for 19 years and had been a sergeant since June 2007. Hall first heard about the movie nights in the lunch room when he was with Officer Mike Makofski. Hall stated that, while he was in the lunch room with Makofski, plaintiff came in and asked Makofski if he wanted to stay late because the midnight shift was having a movie night and Makofski was welcome to watch the movie with the midnight shift. Hall stated that plaintiff referred to himself as the "Redbox" of the midnight shift because plaintiff had a bunch of movies in his car and could provide whatever Makofski wanted to watch. Hall understood plaintiff to be referring to the Redbox movie dispensers at grocery stores.

¶ 23 Hall stated that, on the night of October 26-27, 2009, as he was leaving headquarters after the end of his shift, Langelan was waiting for him at the back door of the station and asked him whether they were still friends. Hall asked Langelan what was wrong. Langelan informed Hall that plaintiff had spoken to him and was upset with him because plaintiff believed that Langelan had told Hall about the movie nights, and that Hall, in turn, had spoken to Deputy Chief Lazaro Perez. Hall realized that Langelan was upset about the situation. Hall denied that he had told Perez or anyone

else about the movie nights after learning about it from plaintiff's conversation with Makofski in the lunch room. Hall was upset that plaintiff would try to blame him for something he did not do.

¶ 24 Hall stated that, on October 30, 2009, he mentioned the movie nights to Perez, but only in the context that plaintiff was trying to blame Langelan as the person who reported the movie nights. Hall stated that Perez told him that he was already aware of the movie nights. During the afternoon of October 31, 2009, Hall received a text from Langelan which stated, "Don't sweat it. He [plaintiff] was fishing. He wants to blame anything [*sic*] on you."

¶ 25 Langelan testified before the Commission consistently with the officers who had been interviewed about the movie nights and the activities that occurred at that time. Langelan also testified that, six or seven days after the movie nights, he was confronted by plaintiff about the movie nights. Langelan testified that plaintiff demanded whether Langelan had "ratted" plaintiff out (using the phrase, "ratted [him] out") three times. Langelan testified that, because plaintiff had accused him of being a "rat," there could no longer be any trust between them. Langelan further testified that he was absolutely intimidated by plaintiff calling him a "rat" and that, while he expected his integrity to be challenged on the street, he did not expect it to be challenged from within the department.

¶ 26 Langelan also testified that he was unable to tell plaintiff that plaintiff's continued presence in the department would cause Langelan to resign because plaintiff was his direct supervisor. Langelan also testified that plaintiff confronted Reavley and Winton in the locker room and also accused them of being "rats" before plaintiff confronted Langelan.

¶ 27 Langelan testified that, when someone provided a barbecue for a shift, although it occurred during duty hours, each officer was given only a half-hour to eat. Langelan also testified that an event taking place on a holiday as compared to a regular shift was an entirely different thing.

According to Langelan, while the officers of a shift might have lunch together, they would do it over their individual breaks. Langelan was not aware of any other occurrence, except the movie nights, where an entire shift was taken off the streets for two or three hours. Langelan testified that he was not aware that a shift watched a football game while on duty or that any barbecues lasted longer than an hour or an hour-and-a-half.

¶ 28 Officer Adam Reavley, of the midnight shift, testified before the Commission. He testified generally consistently with the other witnesses about the activities on the movie nights. Reavley testified that the movie nights were unusual events and that, since the movie nights, he had not watched movies while on duty. According to Reavley, plaintiff made it clear that he wanted nobody to watch the movies but the midnight shift. Reavley believed that, following the confrontation between the plaintiff and Langelan, Langelan was genuinely upset about plaintiff's locker room accusation.

¶ 29 Reavley also testified about the encounter between him, plaintiff, and Winton. When plaintiff asked him and Winton "who ratted me out," both he and Winton were stunned. Reavley was not physically intimidated by plaintiff's questioning, but he felt uncomfortable–"intimidated, upset, and worried"–regarding plaintiff's accusations and what plaintiff was going to think of him.

¶ 30 Reavley recalled that, during his employment with the department, he attended a single barbecue which fell on a holiday. Another sergeant hosted the barbecue, which lasted about 45 minutes. Reavley testified that not all of the officers on the shift were at the barbecue at the same time.

¶ 31 The parties agreed to stipulate to the evidentiary use of plaintiff's internal investigative interviews in lieu of live testimony during the plaintiff's case during the guilt or innocence phase of

the proceedings. Plaintiff also testified for the Commission. On adverse examination, he acknowledged that, early in his tenure as a sergeant supervising the midnight shift, he had showed a clip from the movie, "The Untouchables," in which the Al Capone character struck another character over the head with a baseball bat, noting in the movie that such was the fate of someone who was disloyal to Capone and his operation. Plaintiff also admitted that, in his second conversation with Langelan, when Langelan confronted plaintiff, plaintiff used the term, "ratting [him] out" in the conversation. Plaintiff further admitted that he told the investigatory officers that he did not remember or recall speaking to Reavley or Winton about the movie nights. Regarding the second movie night, plaintiff testified that he did not put the movie into the machine, but he admitted that he did not stop the movie or send the shift back onto the streets.

¶ 32 Plaintiff also testified about the movie nights and was generally consistent with the other witnesses' accounts. Plaintiff testified that he showed the entire shift the movie, "Street Kings," on the first movie night (October 1-2), and he estimated that the shift watched the movie for about two hours. On the second movie night, "Pride and Glory" was shown. Plaintiff did not believe that the movie started immediately after roll call, but believed that the officers started their patrols before returning to the station. Plaintiff did not recall whether he told the officers to come back at a certain time, and he did not know why the movie did not start immediately after the roll call was completed. Plaintiff acknowledged that he put the movie into the player the first night, but did not place the movie into the player for the second night. He also did not recall holding up the movie and announcing that a movie would be shown on the second night. Plaintiff admitted that he provided popcorn on the first night, but stated that he did not know that White Castle sandwiches would be provided on the second night until he walked into the room and they were there.

¶ 33 Plaintiff maintained that he did not try to find out who had informed the departmental administration about the movie night. Other officers told plaintiff that Langelan had informed the administration. Plaintiff testified that he learned this information about Langelan about two weeks before he received the notice to report to the Chief.

¶ 34 Plaintiff denied "confronting" Langelan, but he did admit that they had conversations. Plaintiff testified that he did not ask Langelan why he ratted plaintiff out; rather he talked with him about movie night. Plaintiff testified that Langelan denied any knowledge about how the administration had learned of the movie nights, and plaintiff did not ask him any more questions. Plaintiff testified that a second conversation occurred between them in the locker room. According to plaintiff, after Langelan entered the locker room, plaintiff told Langelan that people were saying that Langelan ratted out plaintiff. Plaintiff did not demand answers from Langelan about his actions. Plaintiff commented that whether being called a "rat" would be negative would depend on the circumstances.

¶ 35 Testifying about his investigatory interview, plaintiff stated that he was asked if he ever said or asked Langelan if the had "ratted [plaintiff] out," using those words. Plaintiff testified that he told the investigators that he never used the term; other officers had told plaintiff that Langelan had ratted him out. Instead, plaintiff stated that he was not engaged in any inquiry about who told the administration about the movie nights. Officers were coming to him and talking about it. Plaintiff also represented to the investigators that he was not upset about being identified as the instigator of the movie nights.

¶ 36 Plaintiff also testified that he did not "confront" Reavley and Winton in the locker room. Instead, plaintiff believed that he had a discussion with them at the nurse's station. Plaintiff testified

that Reavley, along with other midnight-shift officers, was present, and they discussed Langelan and what had happened. Plaintiff testified that he did not initiate the conversation at the nurse's station. Plaintiff testified that he did not accuse Reavley of ratting him out, and he did not recall talking to Winton. Plaintiff testified that he already knew from other officers that Langelan had said something about the movie nights.

¶ 37 Following the presentation of evidence, plaintiff orally moved for a directed finding to preclude the imposition of termination as a penalty. Plaintiff argued that Goncher had not proved a sufficient cause for termination, and also requested that the Commission reconsider a 30-day-suspension-without-pay penalty. The Commission denied the oral motion and plaintiff's alternative request.

¶ 38 Following the parties' argument, the Commission deliberated over the evidence adduced during the guilt or innocence phase of the proceedings. On March 25, 2010, the Commission ruled. The Commission held that plaintiff had organized and permitted the movie nights, that, in using the phrase "ratted him out," plaintiff had been intimidating and disrespectful of his subordinate officers, and that plaintiff had been untruthful during the department's internal investigation of the movie nights.

¶ 39 The proceedings then turned to aggravation and mitigation evidence in order to decide plaintiff's punishment. As an initial matter, plaintiff presented to the Commission a contingent letter of resignation, offering to resign from his position as sergeant if the Commission did not terminate his employment. Next, witnesses in aggravation were presented.

¶ 40 Langelan testified[1] that he would not feel at all comfortable with working with plaintiff again in any capacity. Langelan testified that plaintiff's accusation had ruined their trust and their relationship beyond repair. Further, Langelan would quit the department and look for a new job if plaintiff remained a member of the department. On cross-examination, however, Langelan admitted that his conversations with plaintiff had ended amicably and that he was able to work with plaintiff over the time between the investigation and plaintiff's suspension, a period of 9 or 10 days.

¶ 41 Perez testified before the Commission in the aggravation and mitigation hearing. Perez had the chance to review the Commission's finding order on the guilt or innocence phase of the proceeding. Perez testified that a sergeant is the leader of a shift. It would negatively impact the department if one of its leaders were telling the officers that it was acceptable to stay in the station for a significant portion of the shift rather than performing their duty of patrolling the streets. Additionally, the department's overall morale would be negatively affected if one of the supervisors were disrespectful and discourteous and intimidated his or her subordinates; similarly, the morale would decrease if a supervisor confronted subordinates about the supervisor's own wrongdoing.

¶ 42 Perez testified that the department is obligated to disclose to defense attorneys the fact that a member of the department was untruthful in an internal investigation any time that member would testify in court. The finding of untruthfulness would hurt the officer's ability to testify believably

[1]Langelan testified only in the guilt or innocence phase of the proceedings, but to spare him from returning to testify a second time, Langelan was allowed to testify about aggravation and mitigation in the guilt or innocence proceeding, and his aggravation testimony was clearly indicated as such to the Commission.

in court. Regarding plaintiff specifically, every time he would have to testify, the department would have to relive the movie nights and their fallout. Perez opined that misconduct like plaintiff's would break down the chain of command because, if the supervisor was not performing his duties, then the patrol officers would stop following his orders. In addition, due to the conduct unbecoming finding, the officers might stop trusting plaintiff and would not want to work for him. Perez opined that plaintiff's continued employment would cause a hostile work environment.

¶ 43 Perez testified that, in addition, it is the department's job to protect the citizens of West Chicago. Plaintiff's misconduct was a breach of the public trust. Perez opined that, in light of the Commission's findings, the appropriate disposition of plaintiff would be termination.

¶ 44 On cross-examination, Perez testified that he had not reviewed plaintiff's personnel file. He also stated that the did not know enough of the evidence in the case to know whether plaintiff lied. Instead, his opinion about the appropriate discipline for plaintiff was based only on the Commission's findings.

¶ 45 Continuing on cross-examination, Perez testified that he had worked with plaintiff for 20 years. During that time, Perez noted that plaintiff had not developed a reputation for dishonesty. Likewise, Perez believed that plaintiff did not have a reputation for intimidation. Indeed, Perez testified that plaintiff was a good police officer. He acknowledged that plaintiff had pulled people out of a burning building and had disarmed a suicidal man who was holding a knife. Perez testified that, out of the roughly 50 members of the department, plaintiff would be at or near the top as a police officer. Perez thought that maybe four or five other officers in the department might have earned the same number of commendations as plaintiff.

¶ 46 Perez testified that he was not aware of social functions his officers attended during working hours. Perez also did not discuss with the chief of police, Goncher, anything to do with officers watching ball games, attending barbecues, or taking an entire shift to lunch, as had been disclosed by the testimony of various patrol officers during the hearings on this matter.

¶ 47 Goncher next testified that he had been with the department for 30 years, serving as chief of police during the most recent three years. Goncher testified that, in his time as chief, he was not aware of an entire shift being taken off the streets for a period of several hours. Goncher noted that, when he was a sergeant, he offered to provide a steak dinner for his shift if the officers filled the cells one evening. They did so, and Goncher grilled the steaks for them; the officers would come in on their lunch breaks, which were staggered, and then went back out on patrol. Goncher testified that the barbecue was given 18 years ago, and he did not recall whether the officers were there for longer than a half-hour, or if all of the shift members were there. Goncher testified that there was more than a single patrol officer present, and there might have been two officers present at any one time, plus the then-chief and Goncher. Goncher testified that, at the time of the barbecue, there were three to five patrol officers on a shift. Goncher believed that no more than two-thirds of the shift was present at the same time for a brief period.

¶ 48 Regarding plaintiff's actions, Goncher testified that patrol was a priority in the department. Leaving the streets unpatrolled for several hours during a midnight shift could have been devastating. Goncher noted the importance of police patrol to a community and illustrated his point by referring to the department's General Order 300-20. According to Goncher, the purpose of that general order was to mandate and provide for continuous 24-hour patrol service to the community. Goncher testified that, in his opinion, the department's priorities are compromised if an entire shift is not on

the street patrolling. Goncher believed that patrol and enforcement of traffic laws are the paramount duties of a patrol officer.

¶ 49 Goncher testified that it was not appropriate for plaintiff to confront a subordinate with an accusation of ratting him out. In Goncher's opinion, plaintiff's action could break down the chain of command as well as devastate the subordinate learning that his supervising officer did not trust him.

¶ 50 Goncher testified that, because plaintiff had been found to have been untruthful during the investigation was of great concern because it could affect plaintiff's ability to testify in court. Goncher opined that, if an officer's credibility is ruined for purposes of court testimony, then he or she would be useless as a police officer.

¶ 51 Goncher testified that plaintiff's actions of confronting and accusing subordinates raised serious questions about his judgment. Goncher reasoned that, if the officers were not able to trust their sergeant, it would cause the chain of command to break down. Goncher maintained that plaintiff was not the scapegoat for movie night, but he was considering discipline for other officers involved in the movie nights. The record shows, however, that no other officers had been subjected to any discipline at the time of plaintiff's hearing.[2]

[2]At oral argument, the Commission's attorney represented that other officers who participated in the movie nights had been subjected to discipline. The attorney conceded that any disciplinary actions occurred after the proceedings at issue in this case, and that they were reflected in no source of which we could take judicial notice. We thus limit our considerations to the evidence properly in the record.

¶ 52 Goncher testified that he believed plaintiff exercised poor judgment in connection with the movie nights and his subsequent actions in attempting to discover the identity of the person who ratted him out. Goncher did not believe that plaintiff would be able to lead a shift as he did in the past. Goncher testified that he did not think that he could trust plaintiff any longer. Goncher testified that plaintiff's actions breached the public trust by withdrawing officers from patrolling the streets. Goncher opined that plaintiff could no longer serve as a supervisor in the department because he had breached the public's trust and had lost the trust of the administration and of the officers. Goncher continued, opining that, if plaintiff were returned to the department in a non-supervisory role, it would negatively impact the department by raising questions concerning its integrity and professionalism.

¶ 53 Goncher testified that he had not been involved in any other investigations of departmental officers being accused of untruthfulness. He also could not recall any situations in which a sergeant had confronted a subordinate over the sergeant's wrongdoing. The problem here occurred when plaintiff asked Langelan if Langelan had ratted him out. He believed that Langelan was intimidated when plaintiff confronted him. Goncher testified that he had never previously had issues with plaintiff about confronting or intimidating his personnel. Goncher testified that he believed that there had been one other internal investigation in which plaintiff was determined to have been untruthful, but he did not recall making a determination or recommendation as to discipline in connection with that investigation.

¶ 54 Goncher testified that he had reviewed plaintiff's evaluations, but had not done so recently, or in preparation for his testimony before the Commission. Goncher testified that he did not know whether the final three evaluations had been increasingly better. Goncher testified that, under the

current evaluation scheme, the top score a supervisor could receive was 5.5; in order to qualify for incentive pay, the supervisor would have to score a 3.75 on the evaluation. Goncher noted that he did not read the evaluations by the deputy chief or anyone else concerning plaintiff's performance during his career with the department, either as a supervisor or as a patrol officer.

¶ 55 Goncher testified that he had reviewed plaintiff's disciplinary history. Goncher testified that, in light of his history and the apparent fact that plaintiff had not changed his behavior (by which we assume that Goncher meant that plaintiff continued to engage in actions that subjected him to disciplinary proceedings), termination was the appropriate disciplinary sanction. Goncher also testified that the charges against plaintiff were sufficiently severe and serious to warrant the penalty of termination.

¶ 56 Goncher testified that he concluded, upon reviewing plaintiff's disciplinary history, that plaintiff did not respond to discipline. According to Goncher, the disciplinary file contained 11 findings of discipline against plaintiff. Among these, plaintiff had been suspended three times, for 3, 5, and 14 days. This history factored into Goncher's decision as to the appropriate punishment for plaintiff in this matter. Goncher nevertheless testified that it was plaintiff's recent conduct, not his disciplinary history, that played the major role in his determination regarding punishment. Ultimately, Goncher concluded that plaintiff's termination was the resolution that was in the department's best interests.

¶ 57 Goncher testified that, previously to this case, he had not fired anyone. Likewise, as chief, he had not brought anyone before the Commission. Goncher acknowledged that, during his tenure as chief, there were three officers who resigned before charges were brought against them.

¶ 58 Goncher testified that he keeps a list recording commendations and officers' meritorious conduct. He had not specifically reviewed plaintiff's commendations, but he recalled that plaintiff had received four meritorious bars, which was a significant award. Goncher testified that plaintiff received the four meritorious bars for conduct above and beyond the call of duty. Goncher recalled an incident in which plaintiff disarmed a suicidal young man. In addition, Goncher recalled that plaintiff had climbed into a balcony on a burning building to calm a family who might have been considering tossing the children over the balcony to escape the flames and waiting with them until they all were rescued by the fire department. Goncher further recalled that plaintiff once had run into a burning house and pulled an occupant out of it. In addition, Goncher noted that plaintiff was heavily involved in community events.

¶ 59 Goncher testified that, in a prior internal investigation, plaintiff received a suspension as a result of a confrontation with his ex-wife. Goncher testified that plaintiff had never been confrontational with him. He also had not received any complaints from plaintiff's subordinates that plaintiff was routinely or inappropriately confrontational or intimidating. Goncher conceded that plaintiff usually complied with the department's general orders. Goncher acknowledged that he never asked plaintiff why he showed the movies to the midnight shift. He did not doubt that they were shown to reward the shift.

¶ 60 The parties stipulated that the testimony of Deputy Chief Michael Uplegger and Carol LeBeau would be consistent with their affidavits and the supporting documentation attached to them. Uplegger's affidavit attested to plaintiff's disciplinary record; LeBeau's affidavit attested to plaintiff's periodic evaluations. We will address these items in more detail after we conclude summarizing the witnesses' testimony.

¶ 61 Following the stipulations, the department rested. Plaintiff then presented evidence in mitigation. Officer Anthony Quarto testified plaintiff was a good police officer who had a good heart and who was a good person. Quarto testified that plaintiff was honest and straightforward and had never intimidated him. Plaintiff was easygoing and was not an aggressive person. Quarto noted that plaintiff did not swear and that he had never seen plaintiff lose his temper. Quarto testified that he had experienced other sergeants or ranking officers rewarding their shifts in different ways for doing a good job. He noted that the barbecue hosted by former Chief Mourning was an isolated event that had not recurred during Quarto's tenure with the department. At that barbecue, the entire shift was there, but their radios were on and the then-chief had approved the event. Quarto testified that, in his opinion, plaintiff generally made sound decisions and nothing about this case would change his view of plaintiff as a good supervisor. Quarto allowed, however, that it was not a sound decision to take the entire midnight shift off of the streets for movie night. Quarto further agreed that the movie nights constituted a serious offense. Quarto would continue to respect plaintiff as a sergeant and nobody had shared with him the belief that, if plaintiff were returned to duty with the department, it would fall apart on account of plaintiff's presence.

¶ 62 Quarto testified that he had observed plaintiff interact with the community and work at events, like Railroad Days. Quarto labeled plaintiff an ambassador to the community. Quarto testified that plaintiff had a knack with people and was proud to be of service to the people of West Chicago. Plaintiff had a reputation for fairness and was concerned about his relationships with his shift personnel. If there were a problem, plaintiff would make efforts to bring that problem to some sort of resolution.

¶ 63 Quarto testified that he was aware that plaintiff had been disciplined but was not aware of the details or the number of disciplinary dispositions that plaintiff received. Quarto testified that plaintiff ought to be able to speak to his subordinates as necessary, but did not believe that it was appropriate for a supervisor to discuss his own misconduct with a subordinate. However, if a supervisor had confronted and intimidated an officer, there would have been discussion among the officers, and Quarto had not heard of anything like that through the grapevine. Quarto testified that he did not believe that plaintiff intended to harass anyone. Quarto knew Langelan and Langelan did not approach him or make any statements in front of anybody about the confrontation incident.

¶ 64 Quarto testified that, if he had known about the movie nights, he would not have approved of the second movie night. Quarto believed that, for the first night, if plaintiff had wanted to do something nice for the shift and the officers had their radios on, if a call came in the officers would have immediately responded, so he did not see the harm in the first movie night.

¶ 65 Officer Joseph Trefilek testified that he had worked for the department for 30 years before he retired, and he had known plaintiff for 20 years. He was also aware of the charges against plaintiff and the fact that hearings had been held. Trefilek testified that plaintiff is an honest and hard worker. He believed that plaintiff worked well with the officers of the department and his subordinates.

¶ 66 Trefilek testified that he learned about the movie nights after they had happened. He believed that plaintiff did the movie nights as an attempt to reward his shift because, years ago, plaintiff tried to do an officer of the month award to reward hard work, but it was never officially approved. Trefilek testified that plaintiff tried hard to make everyone happy.

¶ 67 Trefilek testified that, while he was employed at the department, he was aware of other events where officers were called off the streets to attend a cookout or other meal. Trefilek testified that he attended the events. He recalled that they were not limited to half-hour lunches, but they would last for an hour. He noted that the meals would not last more than an hour-and-a-half. Trefilek testified that there were other times when, with the knowledge (and tacit approval) of the supervisors, the officers of the shift would watch football games in the station for longer than a half-hour and possibly longer than an hour. Trefilek testified that no officer had been investigated or reprimanded for participating in events like these. He stated that he participated in the activities and he was never disciplined, even though the events lasted longer than his lunch period. Trefilek testified that he had heard of other shifts being taken out to eat by their sergeants, but he was not aware of any event that took an entire shift off the streets for two or two-and-a-half hours.

¶ 68 Trefilek testified that plaintiff was upbeat and positive. He had never seen plaintiff mistreat a peer or a subordinate. In spite of the charges for which plaintiff had been found guilty, Trefilek would not have had any problems working with plaintiff. Additionally, Trefilek had not heard anyone else claim they would have problems working under or with plaintiff.

¶ 69 Trefilek testified that he believed that all officers had been confronted by a supervisor at one time or other. He conceded it might hurt morale if the supervisor confronted a subordinate about the supervisor's own misconduct. Trefilek also conceded that it might be detrimental to the department if an officer made untrue statements during an internal investigation, but it might not harm the officer's reputation the first time an officer was found to be untruthful in an internal investigation.

¶ 70 Officer Ryan Perry next testified that he had been working for the department for 13 years. He knew plaintiff both as a co-worker and a friend. Perry was also aware of the charges against

plaintiff. In Perry's opinion, plaintiff was always honest about everything and nothing revealed in this case would have changed Perry's opinion about plaintiff. Perry testified that he would still work for plaintiff, and he did not have any questions about plaintiff's integrity or ability to supervise. Perry noted that he was not aware of any other officer who claimed that he or she could not work with or trust plaintiff.

¶ 71 Perry testified that, in his time working with plaintiff, he had never observed plaintiff confront or intimidate another officer. Indeed, Perry did not believe that plaintiff could actually confront or intimidate another. Perry testified that he had not heard anyone else complaint about being confronted or intimidated by plaintiff. Perry noted that if a supervisor did something inappropriate to a subordinate, such as confront or intimidate him or her, talk of the supervisor's action would spread through the department.

¶ 72 Perry testified that plaintiff loved West Chicago and protecting its citizens. Perry testified that his opinion of plaintiff's integrity did not change despite the fact that plaintiff had been found guilty of untruthfulness during the internal investigation. Perry conceded that if a police officer were found to be untruthful, it could have bad effects in court. Perry testified that he is aware that plaintiff had been disciplined, but he was not aware that plaintiff had ever bragged that he had the most suspensions in the department.

¶ 73 Plaintiff also testified on his own behalf in the aggravation and mitigation hearing. Plaintiff testified that, although the department has ways to praise and reward its officers, it does not happen as often as it should, so plaintiff was looking for a way to reward his shift. He admitted that he authorized and participated in the first movie night, which he conceived to be a reward for his shift's hard work. Plaintiff explained that he did not have any extra money to take his officers to dinner,

and there are no sporting events on television at midnight, so he came up with the idea of letting the officers see a movie. The second night, another officer brought in a movie, the officers were comfortable with him, and he believed the second movie was still a "thank you" gesture. Plaintiff testified that he did not stop the second movie night, but he should have. Plaintiff testified that, for the first night, he stayed and watched the movie with his shift, but on the second night, he did not stay.

¶ 74 Plaintiff testified that he attended the funeral of a Batavia police officer who committed suicide, after which he felt that something needed to be done for his department's officers. He did not approach the chief and discuss his belief that there needed to be more of a plan to reward the officers of the department. Previously, plaintiff had tried to create an officer-of-the-month award to reward the department's officers, but that was never officially adopted. Plaintiff did not go to the administration to seek approval for the movie nights, in part, because his other efforts at rewarding the department's officers had been rebuffed. Plaintiff expressly testified that Goncher had not approved the movie nights. Plaintiff noted that he had recommended Langelan and another officer for commendations pursuant to the department's General Order 410-01.

¶ 75 Plaintiff testified that he was not the first to come up with pulling a shift off of the streets to give them a reward. Plaintiff testified about the 1992 barbecue that Goncher provided for his shift. Plaintiff testified that Goncher, then a sergeant, had the entire shift come in for steaks. All the patrol officers, Goncher, and the then-chief were present from the time that Goncher began cooking the steaks until all had eaten. Plaintiff testified that, after they ate, some of the officers were too full, so they stayed and relaxed. Plaintiff was at the barbecue for over an hour-and-a-half, along with everyone else. Plaintiff noted that, at that time, the chief had approved the barbecue.

¶ 76 Plaintiff testified that, after 1992, there had been other events that pulled the patrol officers off of the streets and away from their assigned patrol duties. Plaintiff described observing officers congregating at a donut shop for a long period of time. He also noted that officers had watched sports on television at times while he was both a patrol officer and a sergeant. In fact, plaintiff specifically testified that he had watched both football games and World Series games as a patrol officer when the entire afternoon shift was present and watching the games, and it was not on the officers' lunch periods. Plaintiff testified that, since Goncher became chief, officers have watched sporting events on television. Sometimes, a potluck dinner or pizza has been provided for these events. Plaintiff testified that he has walked into the station and observed the entire shift watching the game, or observed that the station is empty, depending on how busy it is. Plaintiff testified that he usually arrived early and would sit down and watch the event with the officers. Plaintiff noted that other sergeants had done this as well. Plaintiff testified that the administration had never formally, through a general order, directive, or communication at a staff meeting, forbidden these types of activities.

¶ 77 Plaintiff asserted that it is common knowledge throughout the department, including the administration, that these activities were going on. Plaintiff testified that he had seen the deputy chiefs watching sports along with the other officers. Plaintiff testified that in his time with the department, he had repeatedly observed an entire shift taken off of the streets for more than two hours. Plaintiff testified that he did not believe that the chief was aware that roll call sometimes took in excess of two hours. According to plaintiff, Sergeant Samuel had stated that his roll calls usually lasted that long, and he had heard the patrol officers complain about having to sit through such a lengthy roll call.

¶ 78 Plaintiff testified that he did not intend to violate any departmental directives or general orders when he decided to host a movie night. Plaintiff explained that he had been placed over the midnight shift to help rebuild the midnight shift's morale and to restore the shift to the level the administration believed it ought to be. Plaintiff never received any materials that he could study to learn how to motivate the officers of his shift; rather, he tried to imagine how he would want to be treated if he were going to be rewarded for doing a good job. Plaintiff testified that the idea for a movie night came from observing other sergeants rewarding their shifts. Plaintiff testified that he never told anyone not to talk about the movie nights, and he did not intend to try to hide the fact of the movie nights from anyone because he knew that other, similar, events were occurring on the other shifts. Plaintiff reiterated that, on the second movie night, he knew that it should not have been allowed to happen, but he did not feel he could stop it, especially in light of his assignment to build the shift's morale.

¶ 79 Plaintiff testified that, before the investigation of the movie nights commenced, he had separate conversations with Langelan and Reavley. Plaintiff testified that he did not look for either of the officers, but talked to them when he encountered them inside the station. Plaintiff testified that he is about eight inches shorter than Langelan, so he was unable to look down on Langelan when he spoke to him. When he spoke with Langelan, he was neither angry nor upset, and he believed that his demeanor was calm. He spoke to Langelan to find out if he had done something to upset Langelan or otherwise made Langelan feel that he could not come and talk to plaintiff. Plaintiff explained that, in the past, Langelan had come to plaintiff with issues to discuss, thus, plaintiff wanted to know if there was something that had changed between them. Plaintiff testified that, by the time he spoke with Langelan, the word about the movie nights had already spread throughout the

department. Plaintiff testified that other officers on other shifts were already joking with plaintiff about the movie nights.

¶ 80 Plaintiff testified that he had been interviewed as part of the internal investigation (and the results of that questioning had been admitted as evidence by stipulation in the first part of the hearing before the Commission). Plaintiff stated that he did not lie about anything in that interview. Nobody complained to plaintiff about him talking to anyone about the movie nights. Plaintiff testified that he had never been told, trained, or advised by the department that, as a sergeant, he could be subjected to discipline by talking to a subordinate based on the content of the conversation, simply because he outranked the subordinate.

¶ 81 Plaintiff admitted that, during his 19 years with the department, he had been disciplined 11 times. Plaintiff had been suspended three times for periods of three days, five days, and 14 days. Plaintiff asserted that the suspensions did not arise out of his on-the-job conduct. His three-day suspension arose out of an accident with his vehicle. He was allowing a part-time officer from Batavia to ride along with him. At one point he was parked near a fire hydrant. The Batavia officer, without his permission or knowledge, decided to move the car and hit the fire hydrant. Plaintiff testified that he was found to be at fault for the accident and this resulted in a three-day suspension that he did not try to contest.

¶ 82 Plaintiff testified that, in 1994, he was suspended for five days over a domestic issue with his ex-wife. Plaintiff could not recall the specific reasons he was suspended, but he was able to explain the circumstances leading up to the punishment. Plaintiff testified that it was his time to have visitation with his children, but his ex-wife was refusing to let him see his kids. His sister owned the house in which his ex-wife and children lived, and had given him *carte blanche*

permission to enter that house at any time. Plaintiff testified that he went to the house to check on his children. When he arrived, his ex-wife refused to see him, and he heard a party going on inside. Plaintiff climbed up the balcony and entered the house to retrieve his children, and his sister-in-law (perhaps his ex-wife's sister) called the police. Plaintiff testified that he waited for the police to arrive and he gave them his statement. Plaintiff testified that the department wanted to conduct follow-up interviews with the witnesses, but nobody responded to the department's inquiries. Plaintiff did not call the local police to report his concerns about the safety of the children because he did not have a cell phone. Plaintiff received a five-day suspension for this incident. Plaintiff emphasized that, at no time in the investigation of this incident, or in the investigation of the car accident, was he ever accused of being untruthful.

¶ 83 Plaintiff testified about his 14-day suspension. He had purchased a dog for his children. One day, the dog went missing, so he filed a report with the Warrenville police department. He was told that someone had picked up a dog. The Warrenville department told him that they were not able to get the dog, but, if it was acceptable to the West Chicago department, the West Chicago officers could retrieve the dog. Plaintiff, who was off-duty at that time, asked a sergeant, who assigned an on-duty officer to accompany him to meet with the Naperville police officer who was supposed to have the dog. When plaintiff arrived, the Naperville officer stated he did not have the dog, and plaintiff left. The next morning, Du Page animal control told plaintiff that it had the dog. Plaintiff testified that, after an investigation, his attorney, provided by the Fraternal Order of Police, told him that the department had concluded that he had lied during the investigation. He was told that the city was going to terminate him, or he needed to accept a 14-day suspension. Plaintiff testified that, after he had agreed to accept the 14-day suspension, he spoke with the chief, who asked if plaintiff had

received all of the paperwork. Plaintiff testified that he had not and the chief would not give him the suspension until he had read all of the documentation. Plaintiff testified that he did not see where there were allegations that he lied. Instead, he was charged with conducting an unauthorized investigation. Plaintiff disputed the charge, noting that he was off duty and was not investigating. Plaintiff testified that he wished he had better counsel during that investigation. Plaintiff asserted that he did not know that he had the right to appeal the 14-day suspension.

¶ 84 Plaintiff admitted that, while he might have used poor judgment in deciding to use a movie night as a reward to his shift, that incident did not take away from his ability to be a police officer. Plaintiff testified that he worked hard as a detective, and he took the assignment of crime prevention when nobody else wanted to do it. Plaintiff was also one of the officers called to translate when they needed a Spanish interpreter. Plaintiff testified that he always wanted to work for West Chicago, explaining that he only tested for the Batavia police department because he had a friend who worked there. He also tested for West Chicago and was thrilled to obtain a position there. Plaintiff explained that he has lived in West Chicago since the time he was six months old, and he did not leave West Chicago until his family was threatened and his own car had been ruined. Plaintiff testified that he did not take the job for the money or the insurance.

¶ 85 Plaintiff testified that he never lied or had any intentions to lie during the investigation. It did not bother him that other officers talked about the movie nights because plaintiff knew what he did and he accepted responsibility for it. The important thing to plaintiff was not avoiding trouble but what his officers felt about him. Plaintiff testified that no other supervisor would admit to rewarding their shifts, only plaintiff would. Plaintiff regretted putting his officers through the investigation because of his poor judgment as a supervisor, however, his mistakes as a supervisor

did not mean he was not a good police officer. Plaintiff testified that he would always give his best effort in any situation, and his officers would agree with that assessment. Plaintiff maintained that he could continue to give his best efforts as patrol officer or as a supervisor.

¶ 86 Plaintiff agreed that he would not want to be accused of something by a supervisor. He acknowledged that, as a police officer, he was required to be truthful during an internal investigation, pursuant to one of the department's general orders. Plaintiff had testified in court and, when he would do so, he was required to be truthful in his court testimony. Plaintiff was aware that the results of proceedings before administrative bodies like the Commission could be discovered and that he could be cross-examined about untrue statements he made during an internal investigation. Plaintiff did not know what the prosecutor was required to disclose during a case, but he agreed that it would have an impact on the case if it were disclosed that the police officer had been untruthful in a previous internal investigation.

¶ 87 Plaintiff was further questioned about his disciplinary history. Plaintiff testified that he received a verbal reprimand about spending too much time at the Synergy nightclub while on duty. He was given either a verbal or written reprimand to resolve a charge of conduct unbecoming. Plaintiff was unable to recall the 1994 internal investigation regarding two driving-under-the-influence arrests or an incident involving a confrontation with a Du Page County officer. Plaintiff testified that, regarding an investigation related to the Du Page County Children's Center, he acted as a parent in following up charges of child abuse against his daughter, and not as a police officer. Plaintiff testified about an incident at the College of Du Page in which he was charged with creating a disturbance; plaintiff denied that he confronted his ex-wife and yelled at her, and he could not recall whether he was given a verbal or a written reprimand. Plaintiff recalled being reprimanded

about cell-phone usage. He admitted that he joked about having the most suspensions or disciplinary actions in the department; his comment arose during some back and forth teasing with other officers and plaintiff stated that he could not hide something that had happened.

¶ 88 Plaintiff's performance evaluations were also admitted into evidence pursuant to the parties' stipulation. In general, the performance evaluations were very good and did not reflect the discipline that plaintiff received. One evaluation from 2003-04 indicated that plaintiff could be antagonistic towards both peers and supervisors. Another, from 2007-08 stated that plaintiff was, at times, condescending toward other shift supervisors and the evaluator met with plaintiff several times to talk about building rapport with the other supervisors.

¶ 89 Another common thread through the evaluations was a concern that plaintiff was taking more sick-time than was allowed. However, those evaluations were generally older. Plaintiff was also downgraded for failing to complete weekly reports for the month of March during his 2007-08 evaluation. As noted, however, the evaluations were generally quite good and appeared to uniformly rate plaintiff highly enough to qualify for incentive pay.

¶ 90 Plaintiff's disciplinary records were also admitted into evidence pursuant to the parties' stipulation and were generally consistent with plaintiff's testimony regarding the incidents. The documentation concerning the 14-day suspension included an express finding that plaintiff had been untruthful in the internal investigation.

¶ 91 Following the conclusion of the testimony, plaintiff orally moved for reconsideration of the Commission's findings of guilt regarding truthfulness, intimidation, and confrontation. Likewise, plaintiff moved the Commission to reconsider precluding termination as a potential penalty.

¶ 92 On June 8, 2010, the Commission ruled. It granted plaintiff's motion regarding untruthfulness. The Commission further reviewed the record of the guilt or innocence hearing in light of plaintiff's testimony in the aggravation and mitigation portion of the proceedings. The Commission concluded that the allegations of dishonesty had not been proved by a preponderance of the evidence based upon the Commission's determination that plaintiff did not appear to understand that others in this case would have perceived the statements he made during his internal investigation interviews as being untrue. However, based upon the Commission's conclusions that plaintiff exercised poor judgment in leaving West Chicago's streets unpatrolled for lengthy time periods on two nights and that plaintiff intimidated and disrespected his subordinates in confronting them about ratting him out, the Commission determined that there was sufficient cause to terminate plaintiff's employment with the department.

¶ 93 Plaintiff timely filed his complaint for administrative review seeking review of the Commission's decision. After briefing and argument, on March 10, 2011, the trial court ruled that the Commission's findings were not against the manifest weight of the evidence, and its determination that cause for termination existed was neither against the manifest weight of the evidence nor arbitrary and capricious. The trial court confirmed the Commission's decision. Plaintiff timely appeals.

¶ 94 On appeal, plaintiff contends first that the Commission's finding of cause was arbitrary or unreasonable because it did not factor in the apparent lack of discipline to the other participating officers who violated the same general orders plaintiff was found to have violated. Similarly, plaintiff also contends that the Commission failed to consider the evidence of equivalent activities used to reward its personnel. Next plaintiff argues that the Commission's finding that he intimidated

his subordinates was against the manifest weight of the evidence. Last, plaintiff argues that the trial court erred when it failed to remand the matter to Commission for the imposition of a lesser penalty than termination. We consider each contention in turn.

¶ 95 As an initial matter, we consider our standard of review in this case. A police officer may not be discharged except for cause. *Reichert v. Board of Fire & Police Commissioners of the City of Collinsville*, 388 Ill. App. 3d 834, 842 (2009). "Cause" has been defined as a substantial shortcoming which renders the officer's continued employment in his or her office in some way detrimental to the discipline and efficiency of the service or something which the law and sound public opinion recognize as a good cause for his or her being removed from that office. *Cruz v. Cook County Sheriff's Merit Board*, 394 Ill. App. 3d 337, 341-42 (2009). The officer's violation of a single departmental rule may constitute a sufficient cause for his discharge. *Cruz*, 394 Ill. App. 3d at 342.

¶ 96 The object of our review is the Commission's decision rather than the circuit court's decision. *Cruz*, 394 Ill. App. 3d at 342. We review an officer's discharge in two stages: first we review the Commission's finding of guilt, reversing it only if it was against the manifest weight of the evidence; second, we review the Commission's finding that such guilt was a sufficient cause for discharge, reversing it only if its decision was arbitrary and unreasonable or was unrelated to the requirements of the service. *Launius v. Board of Fire & Police Commissioners of the City of Des Plaines*, 151 Ill. 2d 419, 435 (1992); *Malinowski v. Cook County Sheriff's Merit Board*, 395 Ill. App. 3d 317, 322-23 (2009); *Cruz*, 394 Ill. App. 3d at 342. We do not reweigh the evidence or substitute our judgment for that of the Commission, but instead we confirm the Commission's decision when the record contains evidence supporting the Commission's decision. *Malinowski*, 395 Ill. App. 3d

at 323; *Cruz*, 394 Ill. App. 3d at 342. We note, however, that the Commission need not give mitigating evidence such weight that it overcomes its decision to discharge the officer; and a discharge in a case where mitigating evidence was presented is not *per se* arbitrary or unreasonable. *Malinowski*, 395 Ill. App. 3d at 323; *Cruz*, 394 Ill. App. 3d at 342.

¶ 97 The standard of review outlines the form of our initial review. First we consider whether the Commission's findings of guilt (as amended) are against the manifest weight of the evidence. The Commission initially determined that plaintiff had instigated and allowed the movie nights. Plaintiff's own interview from the internal investigation acknowledged these facts; additionally, the parties stipulated to these facts. Clearly, the Commission's findings about the movie nights and plaintiff's involvement were not against the manifest weight of the evidence.

¶ 98 The Commission also found that plaintiff accused Reavley and Langelan of ratting him out. Plaintiff denied that he accused either officer of anything, and claimed that the turn of phrase, "ratting him out," was what other officers from other shifts were saying about Langelan. Plaintiff further characterized his meetings with Langelan as occurring by chance and not as the result of plaintiff seeking him out and confronting him. Plaintiff further contended that he was not mad, but was supplying information to Langelan about what the other officers were saying. In contrast, both Reavley and Langelan testified that plaintiff asked them if they had ratted him out. Langelan described his first conversation with plaintiff as plaintiff employing that turn of phrase and asking him directly if he had ratted plaintiff out. Langelan also described the circumstances of the first conversation as though plaintiff had sought him out. Likewise, Reavley testified that plaintiff entered the locker room and asked him who had ratted him out. Reavley testified that both he and Winton were surprised at the question, describing it as being an almost literally jaw-dropping

question that stunned the two officers. Reavley testified that Winton joked that Reavley had done it, but that plaintiff took Winton's comment seriously and continued asking Reavley if he had ratted plaintiff out.

¶ 99 While the evidence is conflicting, we note that there is ample evidence on either side to support a conclusion. Plaintiff denied making the accusation while both Reavley and Langelan testified that plaintiff asked them directly if they had ratted him out. The Commission was free to judge the witnesses' credibility and to believe either version. In the proceedings below, the Commission obviously accepted the testimony of Reavley and Langelan. We note that Langelan's testimony is consistent with other testimony, like that of Kroning, relating that Langelan had discussed with him plaintiff's accusation against Langelan. We further note that evidence in the record suggested that plaintiff was upset, not only the testimony from Langelan's and Reavley's interviews, but also the interview of Sauseda, in which he related that he had heard that plaintiff was upset a couple of days after the movie nights because the administration had found out about them. Thus there is ample evidence to support the testimony of Langelan and Reavley apart from any determination to credit their testimony while discrediting plaintiff's. We hold, therefore, that the Commission's finding that plaintiff accused subordinates of ratting him out was not against the manifest weight of the evidence.

¶ 100 The Commission also found that plaintiff had intimidated his subordinates. Plaintiff elicited evidence to show that it was preposterous to believe that plaintiff was capable of physically intimidating either Reavley or Langelan because he was very much shorter and smaller than they were. Plaintiff also stated in the interview pursuant to the internal investigation that he did not act angry when he mentioned to Reavley and Langelan that other officers thought it was they who ratted

plaintiff out. From this statement, it can be inferred that plaintiff was not attempting to intimidate the officers. On the other hand, both officers described their conversations with plaintiff as being confronted and accused by plaintiff. Both officers directly testified that they felt uncomfortable that plaintiff was questioning them about his own misconduct in allowing the movie nights in the first place, and Langelan testified that he was concerned both that plaintiff no longer apparently trusted him, as well as about any repercussions that might arise from the fact that plaintiff was his direct supervisor. We also note that the phrase, "ratted me out," as used by plaintiff, is a heavily freighted phrase with strongly negative connotations in this context. Indeed, it suggests that the "rat" has done something wrong by telling his superiors and suggests that the speaker holds the "rat" in particularly low esteem and trust. The reasonable inference from that phraseology is that the words were carefully chosen to indicate displeasure, distrust, dislike and, coupled with a confrontational presentation, that they were calculated to intimidate the recipient. Once again, the evidence is split, and it was the Commission's province to resolve the credibility of the witnesses. Again, the Commission obviously credited the testimony of Reavley and Langelan, and this determination is amply supported in the record. In any event, plaintiff presented evidence against and argued against only physical intimidation, while the Commission held that the intimidation here was caused by plaintiff's position as a superior officer confronting his subordinates and over whom he has power as a superior. Accordingly, we cannot say that the Commission's factual finding that plaintiff intimidated his subordinate officers was against the manifest weight of the evidence. We further note, pursuant to our analysis of the phrase "ratted him out" above, that any discussion, heated or calm, between plaintiff and Reavley and Langelan was disrespectful, and the Commission's finding on this point was also not against the manifest weight of the evidence.

¶ 101 The Commission also found initially that plaintiff had been untruthful in the internal investigation. However, pursuant to plaintiff's motion, the Commission reconsidered and struck this finding. Instead, the Commission found that plaintiff had not intended to be untruthful, but that plaintiff did not appreciate that his statements could have been reasonably interpreted by objective investigators as being untruthful. We are not entirely sure as to the import of this finding. Plaintiff does not claim any error arising from it; likewise, defendants do not challenge the finding either. The evidence in the record supports Commission's ultimate determination that plaintiff did not intend to be untruthful, yet one could believe that certain of his statements were not entirely truthful. As neither party assigns error, we need not definitively decide the point. Suffice it to say that the Commission rescinded its factual finding that plaintiff had lied during the internal investigation, and that untruthfulness thus could not be used as a basis for cause to discharge.

¶ 102 The key factual findings by the Commission, then, are that plaintiff held or allowed the two movie nights, wherein he allowed the entire midnight shift on the first night, and all but one of the midnight shift on the second night to skirt their duty to patrol the streets of West Chicago. The next key finding was that plaintiff accused Langelan and Reavley of ratting him out, and that this accusation was intimidating and disrespectful. The Commission then used these factual findings as cause to discharge plaintiff.

¶ 103 The standard of review framing our analysis at this time also has a second component, whether the Commission's factual findings sufficiently support cause for discharge. We turn now to this consideration.

¶ 104 As noted above, "cause" for purposes of discharge means there exists a substantial shortcoming in the officer's performance that renders his or her continuation as an officer in some

way detrimental to the discipline and efficiency of the department. *Cruz*, 394 Ill. App. 3d at 342. Here, the Commission believed that plaintiff's dereliction of duty by hosting and allowing the movie nights as well as the intimidation and disrespect of his subordinates as evidenced by his accusing them of ratting him out constituted sufficient cause to support plaintiff's termination. We agree.

¶ 105 It has been held that an officer's neglect of duty can be cause for discharge. For example, in *Calomino v. Board of Fire & Police Commissioners of the Village of Schaumburg*, 273 Ill. App. 3d 494, 496 (1995), the officer failed to properly investigate the scene of a burglary; indeed, the officer did not even get out of his squad car before he cleared from the call. The court held that the officer's failure to investigate, by identifying possible witnesses, canvassing nearby residents, arranging for evidence collection and photography of the scene, or even writing out a report was a substantial shortcoming that rendered his continuance as a police officer detrimental to the discipline and efficiency of the service. *Calomino*, 273 Ill. App. 3d at 499-500. Likewise here. In pulling the entire shift off of the streets of West Chicago, plaintiff prevented his officers from fulfilling their duties, namely, patrolling. This alone constituted sufficient cause for discharge. In addition, an officer verbally abusing his fellow officers has been held to be sufficient cause for discharge. See *North v. De Witt County Sheriff's Department Merit Comm'n*, 204 Ill. App. 3d 881, 887-88 (1990) (holding that the morale and administration of the department is impaired when an officer "chooses to inveigh against his fellow officers and superiors while on duty" such that this circumstance constituted sufficient cause for discharge). Here, plaintiff accused both Langelan and Reavley of ratting him out. Just as inveighing against fellow officers, plaintiff's accusations impaired the morale and administration of the department. Even standing alone, accusations and intimidation, too, sufficiently supported the Commission's determination of sufficient cause for discharge.

Accordingly, we hold that the Commission's findings of fact sufficiently supported its determination that cause for discharging plaintiff existed.

¶ 106 We note that, while we may have balanced the facts differently and determined the sufficiency of cause differently than the Commission, that is not our standard of review. Rather, we are limited to considering whether the factual findings made by the Commission were against the manifest weight of the evidence (there was evidence in the record supporting the Commission's findings, so necessarily, its findings were not against the manifest weight of the evidence), and whether the findings of fact provided a sufficient basis to support the Commission's determination that cause for discharge existed (again, the factual findings were directly related to plaintiff's ability, both historical and future, to perform his job for the department, so that his continued employment would be detrimental to the discipline and efficiency of the department; further the findings are neither arbitrary and unreasonable nor unrelated to the requirements of the department). Having generally reviewed the Commission's decision and found it to be well supported in the record, we now turn to plaintiff's specific arguments.

¶ 107 Plaintiff first contends that the Commission's decision to discharge him cannot stand because it overlooked the department's apparent failure to discipline any other of the participating officers for violating the same general orders as plaintiff was found to have violated. Plaintiff argues that all of the officers who attended or directly knew about the movie nights had an obligation under the department's general orders to report the wrongdoing of staying at the station to watch the movies and not fulfilling their obligation to patrol. Plaintiff notes that the department's general orders state that a party who violates a general order shall be subject to discipline. Plaintiff argues that, because

none of the other officers have been or will be subjected to discipline, his own discipline of termination is fatally disparate to the non-discipline of the other officers in this case. We disagree.

¶ 108 Plaintiff appropriately cites *Launius*, 151 Ill. 2d at 441-442, *Wilson v. Board of Fire & Police Commissioners of the City of Markham*, 205 Ill. App. 3d 984, 992 (1990), and *Basketfield v. Daniel*, 71 Ill. App. 3d 877, 881 (1979), for the proposition that, where discipline arising from the same or a closely related incident results in discharge for one officer and a lesser penalty for another officer, the Commission's discharge decision may be deemed to be arbitrary and unreasonable. For example, in *Wilson*, two officers (a sergeant and a patrol officer) had a physical altercation in the station. *Wilson*, 205 Ill. App. 3d at 987. The sergeant was suspended for a 30-day period and the patrol officer was discharged. *Wilson*, 205 Ill. App. 3d at 987. The court determined that, while each individual penalty, if viewed separately, could not be considered to be inappropriate or arbitrary and unreasonable, when viewed properly, as parts of the same event, the two different types of punishment, discharge and suspension, were grossly disparate or disproportionate. *Wilson*, 205 Ill. App. 3d at 992. The court reversed the officers' sanctions and remanded the cause to the Board for a new hearing. *Wilson*, 205 Ill. App. 3d at 992. In *Basketfield*, the officer who was ultimately discharged was precluded from bringing evidence of another officer charged with similar misconduct and who received a suspension instead of a discharge. *Basketfield*, 71 Ill. App. 3d at 879. The court reversed the decision (on other grounds (*Basketfield*, 71 Ill. App. 3d at 880-81)) and directed the Board to allow the evidence of the level of sanction of the other officer to be considered on remand "because it would be relevant and useful to the Board in exercising its discretion and insuring consistency in disciplinary action." *Basketfield*, 71 Ill. App. 3d at 881.

¶ 109 While plaintiff makes a valid point, we still believe that neither *Wilson* nor *Basketfield* are entirely appropriate to govern the outcome here. Instead, we look to *Launius*. In that case, the common event was the extreme flooding of the Des Plaines River, which in turn caused catastrophic flooding in the City of Des Plaines. *Launius*, 151 Ill. 2d at 423-24. The plaintiff walked off his job to deal with the flooding of his own house and check on the well-being of his family. This occurred after the plaintiff was denied permission to leave his post, and thereafter, the plaintiff was out of communication with the department for the next 12 hours, even though the department declared an emergency situation and required its officers to work 12-hour shifts. The plaintiff received a call from another police officer informing him of this fact, and plaintiff called in to the department, but was placed on emergency-paid suspension. *Launius*, 151 Ill. 2d at 424-25. The chief of the department brought the plaintiff before the board seeking termination. *Launius*, 151 Ill. 2d at 426. The appellate court, in reversing the plaintiff's discharge, considered that another officer who did not report for work on the day of the flood was only suspended and not discharged, resulting in impermissibly disparate disciplinary results. *Launius*, 151 Ill. 2d at 440-41. The supreme court rejected the appellate court's reasoning on this point, noting that "cause for discharge can be found regardless of whether other employees have been disciplined differently." *Launius*, 151 Ill. 2d at 442. The supreme court noted that the other officer was actually on his scheduled days off at the time of the flood and was physically unable to make it to work despite being ordered to do so because of the flooding around his house. The supreme court also noted that the other officer was not disciplined for walking off the job, but for cursing at the supervisor who tried to call him to duty for the emergency. The supreme court also distinguished the plaintiff's behavior from the other officer's noting that it was physically impossible for the other officer to make it to work, while the

plaintiff, after checking on his family, could have returned and worked the rest of his shift. In addition, the plaintiff's argument that he did not know about the emergency was due to the fact that he held himself incommunicado and that, had he tried to keep the department aware of his actions and whereabouts, he would have learned of the declaration of an emergency. *Launius*, 151 Ill. 2d at 443-44. Indeed, the supreme court noted the weather reports and flash-flood warnings should have alerted the plaintiff to the likelihood that the department was functioning in a state of emergency, and should have induced him to return to duty. *Launius*, 151 Ill. 2d at 444. The supreme court held that the facts of the other officer's case were not sufficiently related to the facts of the plaintiff's case to render the board's decision to discharge the plaintiff arbitrary and unreasonable. *Launius*, 151 Ill. 2d at 443.

¶ 110 We find *Launius* to be both instructive and directly applicable to this case. Plaintiff here organized and hosted the first movie night, and implicitly approved of the second movie night by allowing it to continue. In contrast, the midnight shift officers were presented with an activity that was clearly approved by their supervisor and, presumably, by the department's administration, especially since plaintiff repeatedly testified that he did not caution anyone not to mention the movie nights or otherwise try to hide the occurrences. While the shift officers had and have a duty to report misconduct, this is a different form of wrongdoing than their supervisor's unauthorized decision to pull the entire shift off of patrol duty for several hours of their shift. While both the supervisor and the shift officers broadly participated in the same event, the wrongdoing of the shift officers and the supervisor are different. Thus, this case is analogous to *Launius*, where even though the two officers' misconduct was related to the flood, their individual actions were sufficiently distinct to support different levels of punishment. In this case, plaintiff's misconduct was both the failure to

report violations of the department's general orders and the unauthorized decision to take the entire shift off of its patrol duties for a significant amount of time during the shift, while the shift officers' misconduct was only the failure to report violations of the department's general orders. Because plaintiff, on his own and without official approval, took the shift away from its duties, he is liable to the sanction imposed by the Commission, notwithstanding any other misconduct on the part of the individual officers stemming from the movie nights. See *Launius*, 151 Ill. 2d at 442 ("cause for discharge can be found regardless of whether other employees have been disciplined differently). The circumstances and actions of plaintiff compared to the other midnight shift officers are not similarly situated and are distinct enough to support differing levels of discipline.

¶ 111 We nevertheless find plaintiff's argument extremely troubling because this case does not involve differing levels of discipline, but involves the harshest discipline versus no discipline whatsoever. Plaintiff does not significantly explore a situation in which only a single officer is disciplined related to an event at which all of the participants reasonably could be disciplined. In other words, is there a situation in which the disparity of disciplinary results should control over the distinctions between the officers' misconduct? Neither the parties' nor our own research has uncovered such a case. As a result, and despite our concerns, we follow the path shown by *Launius*, and rely on the distinctions between plaintiff's conduct and that of the other shift officers to drive our analysis on this point.

¶ 112 In addition, we note that, apart from the movie nights, plaintiff was found to have intimidated and been disrespectful to his subordinates, in violation of the department's general orders. Even if the shift officers' conduct was so closely intertwined with plaintiff's conduct during the movie nights that they all should receive the same level of punishment for the movie nights, plaintiff also engaged

in intimidating and disrespectful conduct when he accused his subordinates of ratting him out. This conduct is different enough from that of the shift officers that the *Launius* distinction may be followed so that his additional actions of accusing his subordinates of ratting him out serve to qualify him for a heavier punishment, and his discharge cannot render the Commission's decision arbitrary and unreasonable. Accordingly, we cannot accept plaintiff's first contention.

¶ 113 In addition to his disparity-of-punishment argument, plaintiff also argues that the movie nights were no different than other reward events, such as barbecues and watching sporting events. Plaintiff argues that the Commission overlooked the testimony that such reward events were not uncommon and that they lasted for two or three hours at a time. Plaintiff argues that, because similar reward events were not uncommon and because nobody else received discipline as a result of hosting a reward event, it is unfair for him to be singled out for punishment when the department's practice has been to hold similar events with no adverse consequences to the hosts.

¶ 114 Plaintiff fails to credit the fact that there was conflicting evidence concerning the practice of hosting reward events such as barbecues. While plaintiff and Cummings testified that they were common and that they lasted for two hours or more, there was other testimony that the 1992 barbecue hosted by Goncher was unique. In addition, there was testimony that, while barbecues were occasionally given, they lasted only a half-hour and only a portion of the shift would be present at any one time. In addition, other testimony related that barbecues could last as long as about an hour, but they would never last longer than an hour-and-a-half. Thus, the Commission's finding regarding award events is not against the manifest weight of the evidence because there is ample evidence in the record to support that finding.

¶ 115 The problem with plaintiff's argument is that plaintiff is conflating the two steps of our review process. Plaintiff is mixing the first step, in which we review the factual findings to make sure they are not against the manifest weight of the evidence, with the second step, in which we consider whether the Commission's proper factual findings support its decision to discharge plaintiff. See *Malinowski*, 395 Ill. App. 3d at 323; *Cruz*, 394 Ill. App. 3d at 342 (setting forth the standard of review). When the separate strands of plaintiff's argument are disentangled, we find that we have already answered plaintiff's contention. First, as regards the propriety of the implicit factual finding that barbecues and other reward events were not commonplace, the evidence is conflicting. The Commission, as fact finder, was free to accept the testimony suggesting that such events were infrequent over testimony that they were commonplace. We cannot determine that this factual conclusion was against the manifest weight of the evidence because it was well supported in the record. Once we have accepted that factual finding as not being against the manifest weight of the evidence, plaintiff's argument becomes counterfactual; in other words, plaintiff argues that reward events like barbecues were commonplace, so that punishment for a movie night is improperly and disparately greater than for the many barbecues which were held without punishment. The problem, of course, is that the Commission found that barbecues and other reward events were uncommon and to punish plaintiff's movie nights was not a disparately tough result precisely because such an event happened only occasionally. See *Launius*, 151 Ill. 2d at 432-34 (where record evidence was conflicting, the board's factual determination was not against the manifest weight of the evidence). In other words, to accept plaintiff's argument, we must make the counterfactual (as determined by the Commission) assumption that events like the movie nights were not an infrequent and occasional

occurrence, but were commonplace. Because we cannot make the necessary assumption in light of the Commission's contrary determination, plaintiff's contention must necessarily fail.

¶ 116 Even if we were to accept plaintiff's premise that reward events similar to the movie nights were commonplace, we still believe that the movie nights were unique and sufficiently different than the other reward events to merit and support the punishment of discharge imposed by the Commission. In the first place, there was no testimony that any reward event spanned more than a single night. There also was no testimony that any award event pulled the entire midnight shift off of its duty to patrol the streets of West Chicago. Similarly, while there was conflicting testimony regarding how long the reward events lasted, the weight of testimony was that it was usually accomplished within an officer's lunch period. The evidence in the record, then suggests that, even if reward events similar to the movie nights were commonplace, they were organized to avoid disrupting the shift's duties; by contrast, the movie nights interrupted the midnight shift's patrol duties for two hours or more on consecutive nights. This is sufficiently more severe to warrant and support plaintiff's discharge. Accordingly, we cannot accept this portion of plaintiff's arguments.

¶ 117 Plaintiff next argues that the factual finding that he intimidated Langelan and Reavley was against the manifest weight of the evidence. Plaintiff recounts that Langelan did not, prior to the disciplinary hearing, state that he could no longer work with plaintiff or that plaintiff's conduct caused him to lose his trust for plaintiff. Similarly, plaintiff points to Reavley's testimony that he was discomfited by plaintiff's accusation, and concludes that discomfiture is not the same as intimidation. This argument disregards both the contrary evidence, such as Langelan's direct testimony that he felt intimidated when his direct supervisor accused him of being a rat, along with the Commission's obligation to determine the facts out of conflicting evidence. As we have noted

above, there is ample evidence supporting the Commission's factual conclusion that plaintiff intimidated his subordinates. See *Launius*, 151 Ill. 2d at 432-34 (where record evidence was conflicting, the board's factual determination was not against the manifest weight of the evidence). While plaintiff points to the contrary evidence, the fact that there is ample evidence to support the Commission's conclusion means that its factual determination is necessarily not against the manifest weight of the evidence. Plaintiff focuses, not on the lack of evidence to support the Commission's conclusion coupled with the evidence supporting his position, but only on the evidence that supports his position. Accordingly, plaintiff's argument fails.

¶ 118 Plaintiff's last contention is that the trial court erred by not remanding the matter to the Commission because it believed that it lacked the power to do so. Plaintiff notes that the trial court possesses the power to remand a matter to the administrative authority solely to impose a lesser penalty than discharge. See, *e.g.*, *Basketfield*, 71 Ill. App. 3d at 880 ("the court has the power to affirm or reverse the decision of the administrative agency in whole or in part or to remand the cause for additional evidence"); *Humbles v. Board of Fire & Police Commissioners of the City of Wheaton*, 53 Ill. App. 3d 731, 736 (1977) (appellate court reversed and remanded the decision to the board with instructions to reconsider the appropriate disciplinary action other than discharge). Plaintiff contends that the trial court failed to properly remand the matter so the Commission could consider the imposition of a lesser sanction than discharge.

¶ 119 Even if the trial court erroneously believed that it could not remand this matter to the Commission for it to consider a penalty other than discharge, we conclude that no error occurred because the trial court had no basis to remand this matter. As we have determined above, the Commission's factual findings were not against the manifest weight of the evidence. Similarly, its

decision to order plaintiff's discharge was supported by the evidence, and was not unreasonable or arbitrary. As a result, the trial court's statement that it could not remand the matter was more likely related to the trial court's correct perception that the Commission's decision had to be upheld rather than an erroneous belief that the Commission's disciplinary decision was incorrect but the trial court could do nothing to correct it. Even if plaintiff's construction is accepted, we reiterate that it is the Commission's decision that we review (*Cruz,* 394 Ill. App. 3d at 342), and the trial court correctly did not disturb that decision. Thus, we find no error in the trial court's judgment.

¶ 120 Accordingly, for the foregoing reasons, we confirm the decision of the Commission.

¶ 121 Confirmed.