



## STATEMENT OF THE CASE

Appellant-Petitioner, Richard A. Lindsey (Lindsey), appeals the trial court's Order affirming the Board of Public Works and Safety's (the Board) decision dismissing him from the Clinton Police Department.<sup>1</sup>

We reverse and remand.

## ISSUE

Lindsey raises one issue on appeal, which we restate as: Whether the trial court erred in affirming the Board's decision.

## FACTS AND PROCEDURAL HISTORY

On November 22, 2004, Lindsey, a twelve-year veteran of the Clinton Police Department, was patrolling near the western city limits of Clinton when he heard a dispatch from the Vermillion County Sheriff's dispatcher reporting a reckless driver traveling south on State Highway 63. State Highway 63 passes one-fourth of a mile to a mile west of Clinton. Although Lindsey was the only officer on duty in Clinton at the time of the dispatch, he left the Clinton city limits and within five minutes intercepted and pulled over the reported vehicle after witnessing a traffic violation.<sup>2</sup>

After Lindsey pulled the vehicle over, he radioed the Clinton Police Department dispatcher marking his location and requesting information on the vehicle registration and outstanding warrants. Lindsey determined the driver of the car was intoxicated. The

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<sup>1</sup> We hereby deny Appellant's Motion for Oral Argument filed on August 8, 2005.

<sup>2</sup> There is conflicting testimony as to how far outside the Clinton city limits Lindsey was when he conducted the stop. Lindsey testified the stop was made one-eighth to one-fourth of a mile outside the city limit, while Chief Bruce Stewart (Chief Stewart) estimated the stop occurred one and one-half miles outside the city limits. Chief Stewart admitted, however, he did not know exactly where the stop occurred nor did he ever visit the location.

Clinton City dispatcher's log and Lindsey's testimony indicate the entire stop lasted approximately ten to fifteen minutes before Lindsey transported the driver to the Vermillion County Jail. The driver was arrested for drunk driving and subsequently pleaded guilty. At no time before or after making the arrest was Lindsey requested or ordered to leave the Clinton city limits.<sup>3</sup>

On January 4, 2005, a month and a half after Lindsey arrested Lambert, the mayor of Clinton, Ron Shepard (Mayor Shepard), ordered Chief Stewart to investigate the arrest outside the city limits, asking "who made the request for [Lindsey] to respond to the . . . possible DUI southbound on State Road 63." (Appellant's Br. p. 6). On January 6, 2005, Chief Stewart responded to Mayor Shepard's request indicating no concern with Lindsey's performance. On January 10, 2005, Mayor Shepard wrote Chief Stewart again. This time Mayor Shepard explicitly wanted Chief Stewart to determine whether Lindsey violated any Standard Operating Procedures (SOP) when he arrested Lambert. On January 18, 2005, Chief Stewart submitted to Mayor Shepard and the other members of the Board the following findings:<sup>4</sup>

Based upon my investigation of this incident I have determined that [Lindsey] did violate [SOP § 20.2], in that he went outside the city limits without advising Clinton dispatch that he was going and without being asked or inquiring if Vermillion Co. Sheriffs Dept. or the [Indiana] State Police wanted him to go.

(Appellant's Br. p. 7). Chief Stewart recommended a one day suspension without pay.

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<sup>3</sup> Chief Stewart, among others, complimented Lindsey at the disciplinary hearing for his actions in arresting the driver.

<sup>4</sup> The Board is comprised of three persons: Mayor Shepard and two other lay persons.

Previously, on November 4, 2004, Mayor Shepard and Lindsey engaged in a heated argument regarding Lindsey's work schedule. After a hearing, the Board determined Lindsey's actions toward Mayor Shepard were "discourteous and insolent." (Appellant's App. p. 17). Lindsey was suspended without pay for five days. Then, on January 13, 2005, two months after the Vermillion County arrest, Mayor Shepard logged another complaint with Chief Stewart regarding Lindsey's failing to promptly report to work in violation of SOP § 3.2.

On February 25, 2005, Chief Stewart served Lindsey with a Notice of Disciplinary Action alleging violations of SOP § 3.2 and SOP § 20.2. On April 21, 2005, a hearing was held in front of the Board. The Board acquitted Lindsey of violating SOP § 3.2, but found he violated SOP § 20.2.<sup>5</sup> Based on the Board's findings that "Lindsey left the city limits without any request or call for assistance from another agency and without notifying the Clinton [Police Department d]ispatcher (or any dispatcher) that he was leaving the city limits to attempt to locate the suspected vehicle," in conjunction with his past disciplinary history, Lindsey was terminated from his employment. (Appellant's Br. p. 8). The Vermillion County circuit court affirmed the Board's decision.

Lindsey now appeals. Additional facts will be provided as necessary.

### DISCUSSION AND DECISION

Lindsey claims the Board improperly terminated his employment based on finding he violated SOP § 20.2. Specifically, Lindsey argues SOP § 20.2 is inapplicable because

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<sup>5</sup> There is nothing in the record before us to indicate Mayor Shepard recused himself from a determination based on allegations he made against Lindsey.

it applies only when an officer's assistance has been requested outside the city limits, but poses no prohibitions against an officer leaving the city limits if no request for aid is received. The City of Clinton contends Lindsey's interpretation of SOP § 20.2 is contrary to the plain language and the underlying purpose of the rule.

Our review of administrative actions is very limited. *Davidson v. City of Elkhart*, 696 N.E.2d 58, 61 (Ind. Ct. App. 1998). We must give deference to the expertise of the administrative body, and we will not reverse the discretionary decisions of administrative bodies without a showing that the decision was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the law. *Id.* Our review is limited to determining whether the administrative body adhered to proper legal procedure and made a finding based upon substantial evidence in accordance with appropriate constitutional and statutory provisions. *Id.* We may not substitute our judgment for that of the administrative body, or modify a penalty imposed by that body in a disciplinary action, absent a showing that such action was arbitrary and capricious. *Id.*

An arbitrary and capricious decision, which the challenging party bears the burden of proving, is a willful and unreasonable decision, made without consideration of the facts and in total disregard of the circumstances, and lacks any basis which might lead a reasonable and honest person to the same decision. *Id.* Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.* On review, we do not reweigh the evidence. *Id.*

Ind. Code § 36-8-3-4(b) provides that an officer may be dismissed, demoted or otherwise disciplined if the Board concludes the officer is guilty of certain conduct,

including a violation of rules or neglect or disobedience of orders. “A decision of the safety board is considered *prima facie* correct, and the burden of proof is on the party appealing.” I.C. § 36-8-3-4(h).

In the instant case, the Board determined Lindsey to be in violation of SOP § 20.2, finding “at no time before or after making the arrest was [Lindsey] requested or ordered to leave the Clinton city limits . . . [n]or did [Lindsey] notify the Clinton [Police Department] dispatcher that he was leaving the city limits.” (Appellant’s App. p. 9). Lindsey was dismissed from the Clinton Police Department based on his violation of SOP § 20.2 and his previous disciplinary record. Lindsey claims SOP § 20 unambiguously does not require that an officer be requested by another agency or receive another agency’s permission before leaving the Clinton city limits, nor does SOP § 20 require an officer to notify dispatch when he leaves his jurisdiction to make an arrest. We agree.

SOP § 20 reads:

20. Out of City Complaints/Patrolling Out of City Limits

1. Officers shall not regularly patrol outside city limits.
2. When another agency requests assistance out of the city limits, officers shall consider distance, the severity of the call, the location and number of other responding units, and if there are other officers on duty in the city. Common sense should be used.
3. Shift commanders or the Chief of Police shall be notified for severe calls, calls beyond a three mile radius, or calls requiring excessive time if only one officer is working.
4. Officers shall secure and maintain the scene until an officer of jurisdiction arrives and return to the city as soon as possible thereafter.

5. Dispatchers shall maintain a log of all out of city calls.

(Appellant's App. p. 13).

It is clear from the text, absent a request from another agency for assistance, SOP § 20 is inapplicable. Here, the Parke County Sheriff's dispatcher immediately notified the Vermillion County Sheriff's Department of a 911 call received regarding a reckless driver traveling south on State Highway 63. The Vermillion County Sheriff's dispatcher, in turn, broadcast the information over a frequency routinely and regularly monitored by the Clinton Police Department dispatcher, Clinton police officers, and Vermillion County officers. Whether the Vermillion County dispatch was technically requesting assistance or not, Lindsey did not violate any portion of SOP § 20.

First, the record shows that Lindsey was not patrolling outside the Clinton city limits. Rather, he only left the city limits after hearing the Vermillion County dispatch; thus, SOP § 20.1 was not violated. The record also indicates Lindsey considered the distance outside of Clinton he would be (no more than one mile) should he intercept the alleged drunk driver on State Highway 63. Lindsey also recognized that removing a drunk driver from the streets more than justified leaving the Clinton city limits; he knew of no other units responding, so, believing himself to be in the best position to intercept the vehicle, he left the Clinton city limits in search of the vehicle in question. Based on our evaluation of the record, we conclude Lindsey used common sense, in line with SOP § 20, in responding to the dispatch.

Further, we note that while our review leads us to conclude Lindsey did not violated SOP § 20.2, he did not violate any section of SOP § 20. Upon leaving the Clinton city limits SOP §§ 20.3 and 4 were invoked. As Lindsey did not travel more than three miles outside of Clinton and the entire call did not last more than fifteen minutes, it was not necessary for Lindsey to notify anyone other than the Clinton dispatcher of his actions, which he did by radioing the dispatcher for information on the driver of the vehicle. Lindsey also secured and maintained the scene until a Vermillion County Sheriff's Deputy arrived.

Accordingly, we find all of Lindsey's actions were in compliance with SOP § 20. Thus, we find the Board arbitrarily and capriciously determined Lindsey violated SOP § 20.2. As a result, we conclude Lindsey's termination is not supported by sufficient evidence.<sup>6</sup>

### CONCLUSION

Based on the foregoing, we find the trial court's order affirming the decision of the Board was arbitrary and capricious.

Reversed and remanded with instructions to reinstate Lindsey to his prior position and reimburse him for back pay and all other benefits.

BAILEY, J., and MAY, J., concur.

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<sup>6</sup> Since Lindsey's termination was based upon this violation in conjunction with his prior disciplinary history, we find his prior disciplinary history alone is not sufficient to support his termination.