SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2991-14T4

JOSEPH ISAACSON,

Petitioner-Appellant,

v.

PUBLIC EMPLOYMENT RELATIONS COMMISSION and TOWNSHIP OF HARDYSTON,

Respondents-Respondents.

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Argued December 21, 2016 – Decided February 27, 2017

Before Judges Simonelli, Carroll and Gooden Brown.

On appeal from the New Jersey Public Employment Relations Commission, Docket No. 2013-001.

Jeffrey D. Catrambone argued the cause for appellant (Sciarra & Catrambone, L.L.C., attorneys; Mr. Catrambone, of counsel and on the briefs).

David N. Gambert, Deputy General Counsel, argued the cause for respondent The New Jersey Public Employment Relations Commission (Robin T. McMahon, General Counsel, attorney; Mr. Gambert, of counsel and on the brief).

Christopher J. Capone argued the cause for respondent Township of Hardyston (Fisher & Phillips LLP, attorneys; Mr. Capone, of counsel and on the brief).

PER CURIAM

This matter is back to us following a remand to respondent Public Employment Relations Commission (PERC). The record reveals that the Township of Hardyston (Township), a non-civil service municipality, issued disciplinary charges against a former police officer, appellant Joseph Isaacson. Isaacson was on duty on May 16, 2012, when he stopped at a delicatessen on Route 23 in Franklin Borough (Franklin). Isaacson went into the delicatessen, and left his patrol car running and locked. After leaving the delicatessen, he proceeded onto Route 23 south in Franklin, where he saw a vehicle with a cracked windshield also turning onto the roadway in Franklin. Isaacson followed the vehicle and entered the license plate number into the mobile data terminal in his patrol vehicle. After discovering that the driver, Christopher Smith, had an outstanding warrant and suspended license, Isaacson stopped the vehicle in the parking lot of a restaurant located in Franklin.

Despite knowing he was in Franklin and that he never observed Smith's vehicle in Hardyston, Isaacson falsely informed the Hardyston Police Department (HPD) dispatcher that his location was "23 on the mountain," referring to a location in Hardyston.

Approximately eleven minutes later, Isaacson falsely informed the dispatcher that he was moving into the parking lot of the restaurant. When HPD Police Officer Andrew Norman arrived at the scene, Isaacson twice lied to him about where he first saw Smith's vehicle.

The HPD has a standard operating procedure that prohibits its police officers from serving or attempting to serve legal process in another jurisdiction without being accompanied by a backup officer from that jurisdiction. Isaacson requested backup from the Franklin Police Department, but no Franklin police officer responded. Isaacson made no further request for backup from the Franklin Police Department. Without a Franklin police officer present, Isaacson issued two summonses to Smith from the Hardyston Municipal Court, in which he falsely certified that Smith unlawfully operated his motor vehicle in Hardyston. Isaacson also placed Hardyston municipal codes on the summonses and marked the word "rural" in the area designation. Isaacson also filed a police report, which falsely stated that the incident occurred on Route 23 in Hardyston. He also collected bail from Smith for the outstanding warrant, completed a bail recognizance form, and submitted the form and summonses to the HPD.

Suspecting that Isaacson had lied about the location of the stop, the HPD began an internal affairs investigation. Because

the matter indicated the possibility of a criminal act, the Chief of Police notified the Sussex County Prosecutor's Office and requested guidance on whether to interview Isaacson. The Prosecutor's Office responded, "[i]f you reach a point where you believe that there is a strong possibility of criminality, you should stop your investigation and contact us before [Miranda[1]] is given. We will proceed with anything that may be criminal."

During his internal affairs investigation, Isaacson initially lied about where he first observed Smith's vehicle and about when he first called in the stop to the HPD dispatcher. He eventually admitted that he never observed Smith's vehicle in Hardyston; knew the location of the Hardyston town line; knew he was in Franklin when he stopped Smith; and knew he was required to notify the out-of-jurisdiction agency of the stop, but did not do so.

Although no criminal charges were filed against Isaacson, the Township suspended him with pay and charged him with violating the HPD's rules and regulations and standard operating procedures by: (1) leaving his patrol vehicle running while unoccupied; (2) operating the mobile data terminal on his patrol vehicle while driving; (3) serving a warrant on a person in Franklin without requesting back-up from the Franklin police; (4) lying and/or

[1] Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

making a misrepresentation while on a motor vehicle stop and in connection with an internal affairs investigation; and (5) intentionally falsifying documents relating to a motor vehicle stop and arrest in Franklin. The Township sought Isaacson's termination. After a neutral hearing officer sustained all of the charges, Isaacson was terminated, effective September 19, 2012.

Isaacson subsequently filed a request with PERC for special disciplinary arbitration and the appointment of an arbitrator pursuant to N.J.S.A. 40A:14-150, -209, and -210, and N.J.A.C. 19:12-6.1. The Township objected to Isaacson's request on jurisdictional grounds. PERC declined to determine the jurisdictional issue and appointed an arbitrator. The arbitrator denied the Township's motion to dismiss for lack of jurisdiction. On February 18, 2013, the arbitrator rendered an order and final decision sustaining only the first two charges. The arbitrator rescinded Isaacson's termination, imposed a ten-day suspension without pay, and required the Township to reinstate him immediately with back pay and benefits.

On February 21, 2013, Isaacson filed an order to show cause, seeking temporary restraints and a preliminary injunction to enforce the arbitrator's award. The Township opposed the order to show cause and filed a motion to vacate the arbitration award.

Following a de novo review, the trial judge affirmed the arbitrator's award and denied the Township's motion. On April 17, 2013, the judge entered an order requiring the Township to immediately reinstate Isaacson with back pay and full benefits. On June 27, 2013, the judge entered an order awarding Isaacson attorney's fees pursuant to N.J.S.A. 40A:14-155.

The Township appealed both orders. We reversed PERC's appointment of an arbitrator and the arbitration award, and remanded to PERC to determine whether the matter was arbitrable under either N.J.S.A. 40A:14-209 or -210. Twp. of Hardyston v. Isaacson, Nos. A-3425-12 and A-4180-12 (App. Div. July 9, 2014) (slip op. at 14), certif. denied, 220 N.J. 98 (2014). We also reversed the award of attorney's fees, finding that Isaacson was not entitled to attorney's fees and costs under N.J.S.A. 40A:14-155 because he was not acquitted of all charges. Id. at 13-14.

On remand, PERC requested certifications or affidavits setting forth the details of the disciplinary investigation from its inception until the final report recommending Isaacson's termination. PERC also requested documents and exhibits created and issued during the investigation that culminated in Isaacson's termination, including the final notice of disciplinary action, as well as a citation to the criminal statutes Isaacson allegedly violated by the conduct that led to his termination.

Isaacson submitted documents to PERC, including the arbitrator's decision, relevant portions of the arbitration hearing transcript, a brief, and his attorney's certification. The Township submitted numerous documents relating to the internal affairs investigation and disciplinary charges, including Isaacson's internal affairs interview and the internal affairs investigation report.

The Township also submitted a certification from HPD Chief of Police Bret Alemy, which provided details of the disciplinary investigation and of the directive he received from the Sussex County Prosecutor's Office about how to proceed in this matter. Alemy certified that the New Jersey Attorney General Guidelines on Internal Affairs required him to notify the county prosecutor where an investigation indicated the possibility of a criminal act and to take no further action, including the filing of charges against the officer, until directed by the prosecutor. Alemy stated that because Isaacson's actions were potentially criminal, he contacted the Sussex County Prosecutor's Office, met with First Assistant Prosecutor Gregory R. Mueller, and was advised that if Isaacson had lied about the location and circumstances leading to the motor vehicle stop and then filed false court documents, this conduct violated N.J.S.A. 2C:28-2 (false swearing), and N.J.S.A.

2C:28-3, (unsworn falsification to authorities), and termination was the appropriate sanction. Alemy then stated:

> Accordingly, I was: (1) authorized by the Sussex County Prosecutor to use Use Immunity[2] with regard to the facts already known; (2) instructed that the Township should first address the matter administratively; and (3) instructed to contact the Sussex County Prosecutor's [Office] in the event any further criminal conduct beyond what we knew was implicated during the administrative process.

Alemy also stated that the internal affairs investigation continued following the Prosecutor's directive to proceed administratively, and the investigator concluded that Isaacson lied and/or made several misrepresentations concerning the motor vehicle stop and during the investigation, and willfully and knowingly falsified and filed false court documents and a false police report, among other infractions.

The Township also submitted Mueller's certification. Mueller corroborated what he had discussed with Alemy and stated as follows:

> It was and remains the opinion of the undersigned and the Sussex County Prosecutor's Office that what transpired on May 16, 2012 was criminal in nature. More specifically, [] Isaacson's conduct on May 16, 2012 violated N.J.S.A. 2C:28-2 (False swearing), N.J.S.A.

[2] "Use immunity" is defined as "[i]mmunity from the use of the compelled testimony (or any information derived from that testimony) in a future prosecution against the witness." Black's Law Dictionary (10th ed. 2014).

> 2C:28-3 (Unsworn falsification to authorities), N.J.S.A. 2C:28-7 (tampering with public records) and possibly N.J.S.A. 2C:30-2 (official misconduct).
>
> It was and remains the opinion of the undersigned and the Sussex County Prosecutor's Office that probable cause existed (and remains) to prosecute [] Isaacson in connection with the above referenced offense(s).
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> After careful consideration and consultation with other members of the [P]rosecutor's [O]ffice, the undersigned decided to permit the matter to proceed — at least initially — administratively.
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> . . . .
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> The most critical factor in my decision not to prosecute [] Isaacson criminally was Chief Alemy's statement concerning the discipline to be imposed if the matter was handled administratively. Chief Alemy advised the undersigned that he would seek to terminate Isaacson's employment as a police officer at the administrative hearing. It was my view that the sanction was sufficient given the totality of the circumstances.

In a January 23, 2015 final agency decision, PERC concluded as follows, in pertinent part:

> A review of the certifications and documents submitted by the Township indicates that [] Isaacson's termination is not eligible for arbitration as "the complaint or charge allege[s] conduct that also would constitute a violation of the criminal laws of this State." See N.J.S.A. 40A:14-209a(2). Accordingly, the request for binding arbitration pursuant to N.J.S.A. 40A:14-209, et seq. is dismissed.

On appeal, Isaacson argues that PERC failed to follow the law in rendering its decision, and failed to indicate what evidence it considered or provide reasons for its decision.[3] Isaacson also argues that he is entitled to arbitration under N.J.S.A. 40A:14-210(a), and the Township's position that this matter relates to a criminal offense is "misleading and untruthful" because the internal affairs documents do not cite to criminal statutes and he was never formally charged with any criminal offense.[4]

Our role in reviewing an agency's decision is limited. In re Stallworth, 208 N.J. 182, 194 (2011). "[A] 'strong presumption of reasonableness attaches to [an agency decision].'" In re Carroll, 339 N.J. Super. 429, 437 (App. Div.) (quoting In re Vey, 272 N.J. Super. 199, 205 (App. Div. 1993), aff'd, 135 N.J. 306 (1994)), certif. denied, 170 N.J. 85 (2001). "In order to reverse an agency's judgment, [we] must find the agency's decision to be "arbitrary, capricious, or unreasonable, or [] not supported by

[3] Isaacson cites no authority to support his additional argument that PERC erred in failing to reconsider its decision or refer the matter to the full Commission.

[4] We decline to address Isaacson's additional contention that he is entitled to attorney's fees under the frivolous litigation statute, N.J.S.A. 2A:15-59.1. For the reasons expressed infra, we find nothing frivolous about the Township's actions in this matter. The Township did not act in bad faith and its position regarding PERC's lack of jurisdiction had a reasonable basis in law. N.J.S.A. 2A:15-59.1(b).

substantial credible evidence in the record as a whole." Stallworth, supra, 208 N.J. at 194 (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980)). As our Supreme Court has instructed,

> [i]n determining whether agency action is arbitrary, capricious, or unreasonable, [we] must examine:
>
> (1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.
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> [Ibid. (quoting In re Carter, 191 N.J. 474, 482-83 (2007)).]

We "may not substitute [our] own judgment for the agency's, even though [we] might have reached a different result." Ibid. (quoting Carter, supra, 191 N.J. at 483). "This is particularly true when the issue under review is directed to the agency's special 'expertise and superior knowledge of a particular field.'" Id. at 195 (quoting In re Hermann, 192 N.J. 19, 28 (2007)). Furthermore, "[i]t is settled that [a]n administrative agency's interpretation of statutes and regulations within its implementing and enforcing responsibility is ordinarily entitled to our deference." E.S. v. Div. of Med. Assistance & Health Servs., 412

N.J. Super. 340, 355 (App. Div. 2010) (second alteration in original) (quoting Wnuck v. N.J. Div. of Motor Vehicles, 337 N.J. Super. 52, 56 (App. Div. 2001)). "Nevertheless, 'we are not bound by the agency's legal opinions.'" A.B. v. Div. of Med. Assistance & Health Servs., 407 N.J. Super. 330, 340 (App. Div.) (quoting Levine v. State Dep't of Transp., 338 N.J. Super. 28, 32 (App. Div. 2001)), certif. denied, 200 N.J. 210 (2009). "Statutory and regulatory construction is a purely legal issue subject to de novo review." Ibid. (citation omitted). Applying these standards, we discern no reason to reverse PERC's decision.

N.J.S.A. 40A:14-150 permits police officers in a non-civil service municipality who were convicted of disciplinary charges and terminated to seek arbitration in lieu of Superior Court review. The statute provides as follows, in pertinent part:

> Any member or officer of a police department or force in a municipality wherein [N.J.S.A. 11A:1-1 to 12-3] is not in operation, who has been tried and convicted upon any charge or charges, may obtain a review thereof by the Superior Court; provided, however, that in the case of an officer who is appealing removal from his office, employment or position for a complaint or charges, other than a complaint or charges relating to a criminal offense, the officer may, in lieu of serving a written notice seeking a review of that removal by the court, submit his appeal to arbitration pursuant to [N.J.S.A. 40A:14-209].
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> [N.J.S.A. 40A:14-150 (emphasis added).]

The word "relating" is defined as "to show or establish logical or causal connection between." Merriam-Webster Dictionary (2017).

N.J.S.A. 40A:14-209(a) permits police officers who were suspended without pay pending resolution of disciplinary charges where termination was sought to seek arbitration in lieu of Superior Court review. The statute provides as follows, in pertinent part:

> When a law enforcement officer . . . employed by a law enforcement agency . . . that is not subject to the provisions of [N.J.S.A. 11A:1-1 to 12-3] is suspended from performing his official duties without pay for a complaint or charges, other than (1) a complaint or charges relating to the subject matter of a pending criminal investigation, inquiry, complaint, or charge whether pre-indictment or post indictment, or (2) when the complaint or charges allege conduct that also would constitute a violation of the criminal laws of this State or any other jurisdiction, and the law enforcement agency . . . seeks to terminate that officer's . . . employment for the conduct that was the basis for the officer's . . . suspension without pay, the officer, as an alternative to the judicial review authorized under [N.J.S.A.] 40A:14-150 . . . may submit an appeal of his suspension and termination to [PERC] for arbitration conducted in accordance with the provisions of [N.J.S.A. 40A:14-210].
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> [N.J.S.A. 40A:14-209(a) (emphasis added).]

N.J.S.A. 40A:14-210(a) provides as follows, in pertinent part:

> In lieu of serving a written notice to the Superior Court under the provisions of [N.J.S.A.] 40A:14-150 . . . seeking review of

> the termination of his employment for a complaint or charges, other than a complaint or charges relating to a criminal offense, as prescribed in [N.J.S.A. 40A:14-209(a)], an officer . . . may submit his appeal to arbitration as hereinafter provided.
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> [N.J.S.A. 40A:14-210(a) (emphasis added).]

Stated simply, N.J.S.A. 40A:14-150 permits police officers to request arbitration pursuant to N.J.S.A. 40A:14-209. N.J.S.A. 40A:14-209(a) permits police officers who are suspended without pay where termination is sought to submit an appeal of their suspension and termination to PERC for arbitration in accordance with the provisions of N.J.S.A. 40A:14-210. Isaacson was suspended with pay, and thus, N.J.S.A. 40A:14-150 and -209(a) do not apply. Because the statutes do not apply, Isaacson was not entitled to arbitration under N.J.S.A. 40A:14-210. The plain language of N.J.S.A. 40A:14-209(a) makes clear that arbitration in accordance with the provisions of N.J.S.A. 40A:14-210 is only available to police officers who are suspended without pay where termination is sought. That was not the case here.

In any event, Isaacson was not entitled to arbitration under N.J.S.A. 40A:14-150, -209(a), or -210(a) because, as PERC correctly found based on ample credible evidence in the record, the charges related to a criminal offense, and the alleged conduct also would constitute a violation of the criminal laws of this

State. Contrary to Isaacson's view, none of these statutes requires a formal criminal investigation, the filing of formal criminal charges, a criminal conviction, or citation to the criminal statutes in the disciplinary investigation or disciplinary charges. Notice to the officer specifying the factual basis for the alleged criminal conduct is sufficient. See, e.g., Appeal of Tuch, 159 N.J. Super. 219, 225 (App. Div. 1978) (holding that "the statute providing for removal for misconduct . . . does not even require that the complaint specify the statutory or Administrative code basis for the removal. It appears to be sufficient if the notice specifies only the factual basis for the alleged misconduct[]"). The disciplinary charges against Isaacson specified the factual basis for his alleged misconduct.

That said, N.J.S.A. 40A:14-150 and -210(a) preclude arbitration for disciplinary "charges relating to a criminal offense," and N.J.S.A. 40A:14—209(a) precludes arbitration for charges that "allege conduct that also would constitute a violation of the criminal laws of this State." The charges against Isaacson meet these requirements.

Mueller certified that the charges against Isaacson alleged conduct that would also constitute a violation of N.J.S.A. 2C:28-2, -3, and -7. N.J.S.A. 2C:28-2 provides as follows, in pertinent part:

> a. False swearing. A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he does not believe the statement to be true, is guilty of a crime of the fourth degree.
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> . . . .
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> c. Inconsistent statements. Where the defendant made inconsistent statements under oath or equivalent affirmation, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant. In such case it shall not be necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant to be true.
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> [N.J.S.A. 2C:28-2(a), (c).]

See also State v. Bielecki, 196 N.J. Super. 332, 334 (App. Div. 1984) (holding that misdemeanor of false swearing by chief of police was a crime "relating to his employment or touching the administration of his office or position").

N.J.S.A. 2C:28-3(a) provides, in pertinent part, that "[a] person commits a crime of the fourth degree if he makes a written false statement which he does not believe to be true, on or pursuant to a form bearing notice, authorized by law, to the effect that false statements made therein are punishable." Lastly, N.J.S.A. 2C:28-7 provides as follows, in pertinent part:

> A person commits an offense if he:
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> (1) Knowingly makes a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government;
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> (2) Makes, presents, offers for filing, or uses any record, document or thing knowing it to be false, and with purpose that it be taken as a genuine part of information or records referred to in paragraph (1)[.]

The evidence in this case indicates that Isaacson knowingly stopped Smith in Franklin, knowingly issued two motor vehicle summonses from the Hardsyton Municipal Court for violations that occurred in Franklin, and falsely certified that the violations occurred in Hardyston. Isaacson also knowingly filed a police arrest report and the two summonses, in which he falsely represented that the stop occurred in Hardyston. It is clear, therefore, that the charge of falsifying documents concerning the motor vehicle stop and arrest in Franklin relates to or also would constitute a violation of N.J.S.A. 2C:28-2(a), -3(a), and -7.

Contrary to Isaacson's argument, the Township did not manufacture some criminal component to the case after he filed a request for arbitration with PERC. The criminal component and the Sussex County Prosecutor's Office involvement in this matter began at the inception of the internal affairs investigation into

Isaacson's misconduct. Mueller determined during the investigation, not after Isaacson applied for arbitration, that Isaacson's conduct violated N.J.S.A. 2C:28-2, -3, and -7, and that probable cause existed to prosecute him for these offenses. Mueller chose not to proceed with formal charges at the time, opting instead to await conclusion of the administrative proceeding for Isaacson's termination. Mueller made clear in his certification to PERC, however, that the statute of limitations has not yet expired for these offenses. Because the disciplinary charges against Isaacson related to a criminal offense and alleged conduct that also would constitute a violation of the criminal laws of this State, he was not entitled to arbitration under either N.J.S.A. 40A:14-209 or -210.

Lastly, we have considered Isaacson's arguments that PERC failed to follow the law in rendering its decision and failed to indicate what evidence it considered or provide reasons for its decision in light of the record and applicable legal principles and conclude they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). PERC's decision is not arbitrary, capricious, or unreasonable and is supported by substantial credible evidence in the record as a whole. R. 2:11-3(e)(1)(D).

Affirmed.