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FILED
Sep 02 2009, 9:15 am
CLERK
of the supreme court, court of appeals and tax court

IN THE
COURT OF APPEALS OF INDIANA

PAUL PHILLIPS,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 89A05-0905-CV-243
	)	
CITY OF RICHMOND, INDIANA,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE WAYNE CIRCUIT COURT
The Honorable David E. Northam, Special Judge
Cause No. 89C01-0701-PL-1

September 2, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-petitioner Paul Phillips appeals the trial court's order affirming the decision of appellee-petitioner City of Richmond, Indiana's, Police Department Merit Commission (the Commission) to demote Phillips from Lieutenant to Patrolman. Phillips argues that the Commission's decision was arbitrary, capricious, and not based on substantial evidence. He also emphasizes that the Commission failed to enter any findings of fact or conclusions of law. Finding that sufficient factual findings can be inferred from the Commission's decision and that the decision is based on substantial evidence and neither arbitrary nor capricious, we affirm.

FACTS

During the relevant period of time, Phillips was a twenty-year veteran police officer with the Richmond Police Department (the Department). On May 28, 2006, Richmond Police officers responded to a complaint of an individual waving a gun from his car window near a McDonald's restaurant. The officers eventually located the suspect vehicle and pulled it over at an intersection. When Phillips arrived on the scene, four other officers were already onsite and had begun removing the vehicle's occupants from the vehicle.

Phillips approached the scene from the side and noticed that his fellow officers were beginning to move forward to an apparently empty vehicle. Because Phillips was not certain that all occupants had, in fact, exited the vehicle and was concerned for the safety of his fellow officers and several bystanders who had refused to leave the area, Phillips ordered the other officers to stop.

Phillips then approached a suspect who had exited the vehicle and was in handcuffs and asked the suspect whether anyone remained in the vehicle. The suspect answered, "No." Tr. p. 187. Phillips then allegedly asked the suspect, "If I'm going up to the vehicle, will you go?" Id. The suspect allegedly assented, at which point Phillips grabbed the suspect from behind and, with the suspect going first and Phillips's firearm pointed at the vehicle over the suspect's shoulder, the two approached the vehicle. After ascertaining that the vehicle was, in fact, empty, Phillips released the suspect and the officers began to search the vehicle. The entire encounter lasted approximately four to five seconds.

Phillips and several other witnesses testified that this human shield technique was part of the training they received as students at the Indiana Law Enforcement Academy (ILEA). A guest lecturer taught the relevant class when Phillips and his classmates were students in the late 1980s. Phillips testified that he was taught that this technique is the safest way to ensure that no one is hiding inside an apparently empty vehicle.

On August 20, 2006, Richmond Police Chief Kris Wolski sent Phillips a letter indicating the Department's intent to discipline Phillips based upon the May 28 incident. Specifically, Chief Wolski stated that

> The use of any person for the purpose of a "Human Shield" is not covered by any department policy nor is it an approved method or endorsed by this department.
>
> Such actions undermine the ability of this department to deliver service to the community. Such behavior can damage community credibility and respect. In such a case, it can endanger the lives of citizens as well as officers. For this reason, violation of the above listed department

> rules/Merit Rules can not be tolerated. As a supervisor, it is paramount that you lead your subordinates by the example you set.
>
> Therefore, it has been determined that you shall be reduced to the permanent rank of Patrolman [from Lieutenant] . . . .

Appellant's App. p. 98. Among other things, Chief Wolski alleged that Phillips had violated General Order OP 99-0572—Temporary Detention (the Temporary Detention Rule) and General Order TR99-0408—Traffic Stop Procedures (the Traffic Stop Rule). In pertinent part, the Temporary Detention Rule states that "[i]t shall be the policy of the Richmond Police Department personnel to handle temporary detainees in an appropriate manner which protects the individual's rights as well as their safety." Appellant's App. p. 73. The Traffic Stop Rule states, in relevant part, that "[o]n felony stops, the violator and passengers will be ordered from the violator's vehicle one at a time and will be positioned for weapons search and restraint according to felony stop training procedures." Id. at 77.

Phillips requested an evidentiary hearing before the Commission, which began on November 30, 2006. On December 14, 2006, the Commission issued a "vote sheet," referencing the eight specific rule violations alleged to have been committed by Phillips and the vote tally of the Commissioners on each charge. The Commission found that Phillips had committed six of the eight violations and affirmed Chief Wolski's recommendation to demote Phillips from Lieutenant to Patrolman.

On January 12, 2007, Phillips filed a petition seeking judicial review of the Commission's decision. Following briefing and oral argument, the trial court issued findings

of fact and conclusions of law on March 9, 2009, affirming the Commission's decision. In relevant part, the trial court found as follows:

> 22. Chief Wolski testified there was no rule explicitly prohibiting the human shield technique for clearing vehicles during a felony stop; however, his testimony was that such a technique was prohibited by the other general rules specified.
>
> ***
>
> 24. Chief Wolski testified that in his opinion the actions of Officer Phillips on the evening of May 28, 2006 in regard to the use of the human shield technique is a violation of Richmond Police Department's various rules, policies and procedures relating to the care and protection of detainees. . . .
>
> ***
>
> 27. Officer Phillips and several classmates testified that he was taught a particular felony traffic stop procedure/technique at the ILEA in 1987-88 by a guest instructor on field day.
>
> 28. The technique that Officer Paul Phillips was taught requires taking the last known suspect, with the consent of the suspect, back to the suspect vehicle in order to determine if any unknown occupants remain in the vehicle posing a potential threat to the Officer or other persons on the scene.
>
> 29. Officer Phillips testified that the use of the detainee as a shield had been taught to him at the ILEA on field day and further testified he was trained by his instructor that it was one of the safest ways to check the status of a vehicle.
>
> 30. Officer Phillips testified he did not receive any additional training in felony traffic stop procedure from the Richmond City Police Department.
>
> 31. The instructor of Officer Phillips was believed to be a guest instructor; and therefore, the content of his class may not have been specifically approved by ILEA.
>
> 32. Testimony was presented by affidavit of Rusty K. Goodpaster, Executive Director of ILEA, that no instructor of the ILEA taught

the human shield technique and that the ILEA does not promote that type of technique of a human shield.

33. Several Richmond police officers testified that they had never used a human shield as an officer with the Richmond Police Department, nor had they been trained that way, nor that they had seen it used by anyone else.

34. Officer Phillips testified that he had only been involved in the use of the human shield procedure three times during his employment with the Richmond Police Department, including the night in question.

35. Officer Phillips testified that other than the three incidents referred to previously he had not shared with any officer in the Richmond Police Department the stop technique in question, nor had he ever mentioned the use of the said technique.

***

CONCLUSIONS OF LAW

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5. There was conflicting evidence as to the exact details of the incident in question . . . ; however, . . . it is undisputed that Phillips walked the handcuffed suspect up to the stopped vehicle with his gun drawn and the suspect in front of Phillips for the purpose of clearing the vehicle, which constitutes substantial evidence of the actions of Officer Phillips.

***

11. The Commission's decision was neither arbitrary nor capricious. Phillips did not dispute the basic facts of the incident in question and primarily argued that his training of approximately twenty years earlier and the lack of an explicit prohibition of a seldom used and somewhat unknown procedure should excuse him for such actions. Such a position does not establish that the Commission's decision was so willful, unreasonable and without any consideration of the facts and circumstances to such a degree that a reasonable and honest person could not come to the same conclusion.

12. The Commission's decision did not violate any constitutional, statutory or legal principles.

***

b. Phillips also raises procedural concerns as to whether the Commission made adequate findings . . . . Phillips did not dispute the basic facts regarding the events of the stop on the evening of May 28, 2006. Petitioner's defense centered around his explanation for his actions. Although more specific findings may have shed light on the Commission's reasons for considering the explanations inadequate, it is implicit by the vote the Commission found the explanations were inadequate to excuse his actions. The vote of the Commission does constitute adequate findings, based upon the undisputed facts of the incident, that the procedure used by Phillips violated the rules in question. To remand for more specific findings would only delay an already lengthy process without substantially adding to the court's ability to review the commission's decision.

Appellant's App. p. 14-24. Phillips now appeals.

DISCUSSION AND DECISION

I. Standard of Review

In reviewing the decision of an administrative agency, we defer to the agency's expertise and will not reverse simply because we may have reached a different result. Filter Specialists, Inc. v. Brooks, 906 N.E.2d 835, 844 (Ind. 2009). To that end, we may consider only whether the decision was based on substantial evidence, was arbitrary and capricious, or was in violation of any constitutional, statutory, or legal principle. Id. "Substantial evidence" means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Ind. Family and Soc. Servs. Admin. V. Pickett, 903 N.E.2d 171, 177

(Ind. Ct. App. 2009). An arbitrary and capricious decision is one that is patently unreasonable, made without consideration of the facts and in total disregard of the circumstances, and lacks any basis that might lead a reasonable person to the same conclusion. Fornelli v. City of Knox, 902 N.E.2d 889, 892 (Ind. Ct. App. 2009), trans. denied. The challenger bears the burden of proving that a decision is arbitrary and capricious. Roberts v. County of Allen, 773 N.E.2d 850, 853 (Ind. Ct. App. 2002).

II. Lack of Findings

Phillips argues that the decision must be remanded to the Commission because of the lack of findings of fact in its decision to demote him. Although findings of fact are normally required in an agency decision, Wyman v. Petroleum J& S, Inc., 706 N.E.2d 1107, 1109 (Ind. Ct. App. 1999), they may take a variety of forms, Hardesty v. Bolerjack, 440 N.E.2d 490, 494 (Ind. Ct. App. 1982). In Hardesty, a discharged county police officer appealed the Merit Board's decision because, among other things, of the lack of findings of fact. This court affirmed, noting the existence of specific charges and holding that because the Board found that the officer committed the violations set forth in the charges, the Board necessarily found the facts as alleged. 440 N.E.2d at 494.

Here, as in Hardesty, Phillips was informed of specific charges in the initial letter sent by Chief Wolski, which details the Department's "concerns over the handling of a traffic stop resulting in the use of a male juvenile as a 'Human Shield' for the purpose of securing a suspect vehicle." Appellant's App. p. 96. Among other things, the letter notifies Phillips that his actions violated the Temporary Detention and Traffic Stop Rules. Id. at 97. Furthermore,

the vote tally sheet indicates that the Commission voted separately on each of eight charges, including the violations of the Temporary Detention and Traffic Stop Rules. Id. at 8.

Although it would have been advisable for the Commission to adopt specific findings of fact and we encourage it to do so in the future, we can infer from this record that the Commission must have found the facts as alleged in the initial letter and concluded that those facts constituted a violation of multiple Department Rules. In other words, this record allows us to ascertain the basis of the Commission's decision even in the absence of findings of fact. Additionally, we note that the critical facts about the incident in question are undisputed. Under these circumstances, we do not find that the lack of specific findings necessitates a reversal or a remand.

III. The Decision

Phillips argues that the Commission's decision to demote him to Patrolman was not based on substantial evidence and was arbitrary and capricious. He emphasizes that he and several of his classmates testified that they were taught the human shield technique while they were students at ILEA and that he was never instructed by the Department that the method was forbidden.

The Department offered the testimony of eight Department officers, none of whom had ever used or heard of the human shield technique. Additionally, Chief Wolski testified that it is impossible to create specific rules relating to every possible situation that officers might encounter: "There is no way that you can possibly figure out what someone might be capable of doing at some point in time in their career to write a policy for it." Tr. p. 118. A

classmate of Phillips agreed, testifying that it is not possible "to write a book of rules or orders to cover every conceivable situation[.]" Id. at 59.

The Department, therefore, relies upon general rules to govern the conduct of its officers. As noted above, there is a specific procedure set forth for felony traffic stops in the Traffic Stop Rule. When Phillips arrived on the scene on the night in question, the first-responding officers were following the procedures as set forth by the Traffic Stop Rule. He ordered them to stop, however, and implemented the human shield technique to ensure that the vehicle was actually vacant. Though the Traffic Stop Rule does not explicitly forbid this technique, it could reasonably be inferred from the specific procedures set forth therein that officers are not to deviate from those procedures. Therefore, we cannot say that the Commission's conclusion that Phillips violated this Rule was not based on substantial evidence or was arbitrary and capricious.

Even more compelling, the Temporary Detention Rule states that "[i]t shall be the policy of the Richmond Police Department personnel to handle temporary detainees in an appropriate manner which protects the individual's rights as well as their safety." Appellant's App. p. 73. Chief Wolski testified that

> [o]nce we take [suspects] into custody, they are our responsibility. Up till the point that we actually take physical hold of them and they are detained by us, they are not our responsibility. But at that point they are, and we are—we must provide for their safety and well being, whether they are a criminal or not.

Tr. p. 80. Although there is no rule explicitly forbidding officers from employing the human shield technique, a reasonable person could conclude that Phillips's decision to use a

handcuffed suspect as a human shield violated the general rule requiring that officers protect the rights and safety of temporary detainees. Therefore, we do not find that the Commission's decision that Phillips violated the Temporary Detention Rule was not based on substantial evidence or was arbitrary and capricious.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and RILEY, J., concur.