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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PATRICK SPOERRY,)	Appeal from the
)	Circuit Court of Cook County
Plaintiff-Appellant,)	
)	
v.)	No. 12 CH 18260
)	
VILLAGE OF ARLINGTON HEIGHTS, ARLINGTON)	
HEIGHTS FIRE AND POLICE COMMISSION, MARY)	Honorable Rita M. Novak
RATH, as director of human resources for the Village of)	Judge Presiding.
Arlington Heights, CHIEF OF POLICE GERALD)	
MOURNING, INVESTIGATOR CHARLES)	
BUCZYNSKI, COMMANDER ANDREW WHOWELL,)	
SERGEANT JEROME LEHNERT, SERGEANT)	
THOMAS BOGGS, SERGEANT STEPHANIE MACK,)	
CAPTAIN KENNETH GALINSKI, and CAPTAIN)	
NICHOLAS PECORA,)	
)	
Defendants-Appellees.)	

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Harris and Justice Pierce concurred in the judgment.

ORDER

¶ 1 *Held:* Arlington Heights Board of Fire and Police Commissioner's decision rejecting plaintiff's challenge to the sergeant promotional process for the Arlington Heights Police Department and its application to plaintiff were not clearly erroneous, arbitrary, or unreasonable. Trial court did not err in denying injunction as moot.

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¶ 2 Plaintiff Patrick Spoerry, a patrolman for the Arlington Heights Police Department (Department), sought administrative review of the Arlington Heights Board of Fire and Police Commissioner's (Board) decision rejecting his promotion to police sergeant. Plaintiff filed an appeal with the Board alleging that the promotion process was unfair and compromised and in violation of Illinois law, Department, and Arlington Heights Fire and Police Commission (Commission) rules. The Board denied his appeal. Plaintiff then filed a complaint in the Circuit Court of Cook County for administrative review pursuant to the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2008)).

¶ 3 Following the Board's answer and briefing by the parties, the trial court affirmed the Board's decision and rejected plaintiff's request for an injunction against the appointment of other candidates to the rank of sergeant as moot. Plaintiff filed the instant appeal, *pro se*, arguing that the Board's decision was against the manifest weight of the evidence and its procedures were contrary to law. Plaintiff also argues that the trial court erred in failing to issue an injunction. For the following reasons, we affirm the order of the trial court and the decision of the Board.

¶ 4 I. BACKGROUND

¶ 5 On August 29, 2011, the Village of Arlington Heights posted its police sergeant promotion announcement through a written notice from defendant Mary Rath, human relations coordinator for the Village of Arlington Heights and liaison to defendant Commission. The notice included an application form that eligible police officers interested in being considered for a promotion to sergeant were to return to the human resources department by January 6, 2012. The notice also stated that a written examination would be administered to applicants on January 23, 2012, with a review and appeal session to follow on January 26, 2012. A reading list was

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attached as reference documents that were "used to formulate the questions in this job-validated examination." In addition, the notice indicated that oral interviews for applicants would be conducted the last two weeks in February.

¶ 6 On January 9, 2012, Rath issued a memorandum to all 33 police officers signed up to take the examination for police sergeant. Rath indicated that the written examination would take place on January 23, 2012, and a score of at least 70% was required to pass the test. Rath further indicated that for the scoring of the police sergeant examination, the written examination would constitute 50% of the total weight. The remaining examinations were an oral interview by the Commission and a departmental evaluation, each of which constituted 25% of the total weight.

¶ 7 Following the written examination, Rath sent the pre-appeal test scores to Police Chief Gerald Mourning and requested they be posted. The scores were listed by ID number and not by name. Rath did the same for the post-appeal adjusted test scores. Plaintiff and ten other officers passed the written examination, with plaintiff scoring the second highest score after post-appeal adjustments were made.

¶ 8 For the departmental evaluation, plaintiff scored the lowest of all applicants, receiving a score of 14.4048 out of a possible 100 points. Half of this score was determined from a ten-category rating form completed by a panel consisting of Captain Kenneth Galinski, Commander Andrew Whowell, and Rath. This panel interviewed the candidates' supervisors with the most recent knowledge of the candidates' performance and rated each category either below average, average, above average, or superior and calculated a final score from those ratings.

¶ 9 The second half of the departmental evaluation was determined from a "forced evaluation," in which supervisors compared the candidates against each other. Plaintiff received a score of 37 points out of 420 possible points in the forced evaluation. Chief Mourning

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compiled the scores from the evaluators as part of the departmental evaluation and provided those to Rath on March 14, 2012.

¶ 10 The oral interviews of the 11 candidates were the final phase of testing in the sergeant promotional process. Plaintiff received a score of 80 out of 100 from each of the interviewers, for a third-highest weighted average of 20. The scores from all three phases were compiled for the candidates to reach a final score and ranking. Plaintiff received the lowest final score of 68.6012 with the top three candidates scoring above 84. On April 20, 2012, the police sergeant eligibility list indicating the candidates' final scores and placement was posted with an expiration date of April 20, 2014.

¶ 11 On April 26, 2012, plaintiff requested an appeal of the promotional list alleging that the process was not properly conducted. Plaintiff claimed that the confidentiality of the testing results was compromised and the evaluation violated the relevant section of the Illinois Municipal Code (Municipal Code) (65 ILCS 5/10-2.1-15 (West 2012)) concerning fire and police promotions and Commission rules because the process was not competitive or merit based. Plaintiff also asserted that the process did not comply with the police department's general order on promotions and that the integrity of the evaluation panel by the selection of panel members and interviewees.

¶ 12 On April 27, 2012, Rath issued a personnel order for the Village. The order stated, *inter alia*, that Investigators Joseph Pinnello and Charles Buczynski would be promoted to the rank of sergeant, effective May 22, 2012. Pinnello and Buczynski achieved the two highest final scores in the police sergeant promotional process.

¶ 13 On May 8, 2012, Rath sent a written letter to plaintiff responding to his appeal, stating "[a]fter review with the Assistant Village Attorney as well as the Police Department, we have

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concluded that the process used meets all applicable laws and regulations." On May 16, 2012, plaintiff filed the underlying complaint for administrative review. On February 8, 2013, plaintiff moved for a stay against the Board to try and stop the appointment of two officers to sergeant. On February 20, 2013, the trial court denied plaintiff's motion to stay the promotion of the two officers. On May 21, 2013, the trial court affirmed the decision of the Board and rejected the request for an injunction as moot as the two officers were appointed to the rank of sergeant in May 2012.

¶ 14

II. ANALYSIS

¶ 15 Perhaps due to the *pro se* plaintiff's misunderstanding of the trial court's decision, a lack of understanding of the Administrative Review Law, or inartful pleading and argument, there is some confusion between the two parties as to the exact issues presented by plaintiff and before this court and what standards we are to follow in our review. The Administrative Review Law applies generally to all of division 2.1 of article 10 of the Municipal Code. This includes the section cited by plaintiff (65 ILCS 5/10-2.1-15 (West 2012)) at issue in this case and the Administrative Review Law provides the exclusive method of review of all final decisions of boards, unless some exception of the Administrative Review Law applies. *Mueller v. Board of Fire and Police Commissioners of the Village of Lake Zurich*, 267 Ill. App. 3d 726, 731 (1994).

¶ 16 In an action under the Administrative Review Law, we review the decision of the agency, not the circuit court. 735 ILCS 5/3-110 (West 2008); *Amigo's Inn, Inc. v. License Appeal Comm'n*, 354 Ill. App. 3d 959, 964 (2004). Factual determinations by an administrative agency are held to be *prima facie* true and correct and will stand unless contrary to the manifest weight of the evidence, which requires a finding that all reasonable people would find that the opposite conclusion is clearly apparent. *North Avenue Properties, L.L.C. v. Zoning Board of Appeals*, 312

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Ill. App. 3d 182, 184 (2000). A plaintiff in an administrative proceeding bears the burden of proof, and if he fails to meet that burden, relief will be denied. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 532 (2006).

¶ 17 However, questions of law are subject to *de novo* review. *Enesco Corp. v. Doherty*, 314 Ill. App. 3d 123, 131 (2000). This also applies to judicial review of an interpretation given by an administrative agency of its own rules. *Nolan v. Hillard*, 309 Ill. App. 3d 129, 143 (1999). An agency's determination enjoys the presumption of validity; however, it is not ultimately binding on this court and will not be followed where it is clearly erroneous, arbitrary, or unreasonable. *Id.* When confronted with a mixed question of fact and law in an administrative review case, we consider the agency's decision under the clearly erroneous standard. *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205 (1998).

¶ 18 Defendants correctly note that this case was decided by the trial court after briefing and argument pursuant to the Administrative Review Law and plaintiff's argument that the trial court improperly granted summary judgment is in error. They are also correct that the trial court's order is immaterial to plaintiffs' claims that the promotion process violated the law on its face and as applied because this is an appeal under the Administrative Review Law and our concern is the Board's decision. However, the trial court's order is relevant to plaintiff's argument that it was error to reject his request for injunctive relief. We will dispose of this issue first.

¶ 19 Plaintiff filed his complaint for administrative review and injunctive relief on May 16, 2012, eight days after the Board rejected his appeal and six days before Pinnello and Buczynski were to be promoted. However, plaintiff did not seek a stay before the trial court until February 8, 2013. That motion was denied on February 20, 2013, and on May 21, 2013, the trial court correctly denied his complaint for injunctive relief as moot. The officers were promoted after the

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filing of the appeal, but before any motion to stay was filed, thereby rendering it impossible for the trial court to grant effectual relief to plaintiff. *Nolan v. Hillard*, 309 Ill. App. 3d 129, 137 (1999), citing *Richardson v. Rock Island County Officers Electoral Board*, 179 Ill. 2d 252, (1997).

¶ 20 The central issue before this court is the Board's consideration of the Municipal Code and its own rules in relation to the sergeant promotion procedure. Plaintiff's appeals to the Board and before this court both involved claims that the Board's process violated the Municipal Code and its own rules. Plaintiff also argues that the Board considered impermissible criteria under the Rules and failed to properly give weight to additional evidence.

¶ 21 As addressed by the court in *Mueller*, "the legislature intended that the Board promulgate rules to provide for the orderly appointment and promotion of employees based on public, competitive, qualifying examinations. *** These functions are intertwined in the rules provisions which are intended to provide for a unified system – premised on merit, the ability to perform, and good character – for the employment, retention, and discharge of members of fire and police departments." *Mueller*, 267 Ill. App. 3d at 731-32.

¶ 22 One of these rules provisions alluded to by the *Mueller* court is the provision cited by plaintiff from the Municipal Code, which states, in pertinent part:

"The board, by its rules, shall provide for promotion in the fire and police departments on the basis of ascertained merit and seniority in service and examination, and shall provide in all cases, where it is practicable, that vacancies shall be filled by promotion. All examinations for promotion shall be competitive among such members of the next lower rank as desire to submit themselves to examination. All promotions shall be made from the 3 having the highest rating,

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and where there are less than 3 names on the promotional eligible register, as originally posted ***." 65 ILCS 5/10-2.1-15 (West 2012).

¶ 23 By the plain language of section 15, the Board is granted discretion to establish rules for determining merit and efficiency ratings, which are inherently discretionary by their very nature. *Zuelke v. Board of Police and Fire Commissioners of Broadview*, 79 Ill. App. 3d 1080, 1082 (1979). Although not of record, plaintiff cites to the Board's Rules and the District's General Order 34.1 in arguing that the Board's decision was clearly erroneous, defendants include these documents in the appendix to their brief. Section 18 of the Board's Rules provides that "Promotions shall be made on the basis of merit, seniority in service, and examination. All examinations for promotions shall be competitive among such members of the next lower rank who desire to submit themselves to such examination and in accordance with applicable provisions of current collective bargaining agreements, if any." Village of Arlington Heights Fire and Police Commission Rules, § 18 (eff. December 2001).

¶ 24 General Order 34.1 mimics the Commission's language in its section on promotion procedures to the rank of sergeant. The order also provides that the first phase in the promotion process is the written examination, requiring a 70% score to move on to the second stage of the process. The written examination constitutes 50% of the overall process score. The second stage is an oral interview with the Commission and the third is a departmental evaluation of promotion potential of candidates compiled by a panel and based upon interviews of the immediate supervisors of candidates. The order provides that the second and third stages each constitute 25% of the overall score. In addition, the order allows for awarding extra points to candidates based on seniority. Arlington Heights Police Department, General Order 34.1 § II (amended January 28, 2010).

¶ 25 Plaintiff contends that there must be a clear measurable standard for the identified bases upon which candidates are measured. He argues that without an established standard for "merit," that is clearly defined, there can be no true competition or validated response. In his appeal to the Board, plaintiff noted that the forced evaluation process had been utilized in the past, but he maintained, and argues here, that the Municipal Code, Rules, and General Order do not provide for such a test. He contends that its use created an unfair process that more closely resembled a popularity contest than a competitive evaluation of merit.

¶ 26 We disagree and find that the Board's decision affirming the promotion process, and the application of the process in this case, was not clearly erroneous, arbitrary, or unreasonable. Case law has provided that through the Municipal Code, the legislature granted discretion to the Board to determine a process for evaluating police officer promotion candidates and that this process is also inherently subjective and requires further discretion to complete. *Zuelke; Hauri v. Batzel*, 71 Ill. App. 3d 164, 166-67 (1979), *rev'd in part on other grounds, Mueller*, 267 Ill. App. 3d at 731. This discretion is also passed along through the Board Rules and General Order. Further, "[g]uidelines with regard to personal evaluation cannot be precise or all-embracing, something must be left to the judgment and experience of the evaluator." *Hauri*, 71 Ill. App. 3d at 167.

¶ 27 With such discretionary and subjective issues at play in determining merit and ranking of candidates, any method of selection will have some possibility of favoritism or partisanship and absolute precision and objective measuring of merit is impossible in such a human endeavor. The statute and rules at issue in this case do not require a completely detached method of determining the best candidates for promotion. The personal attributes and abilities of a candidate are crucial in determining the likelihood of success in a police officer seeking

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promotion and input from supervisors in the Department is a logical approach to determine that issue. See *Id.* This process has been utilized by the Department and plaintiff understood the process completely. Nothing in the Municipal Code, Board Rules, or General Order bars this type of evaluation and plaintiff has failed to demonstrate that input from supervisors within the Department makes the instant promotion process clearly erroneous, arbitrary, or unreasonable.

¶ 28 Finally, plaintiff's claims that the Board failed to take into account his extensive list of "self-initiated actions and training" that was provided on appeal to the Board and the Board's use of subjective rankings arguably raise the issue that the decision was against the manifest weight of the evidence. Plaintiff argued that the list demonstrates his qualifications and extra efforts as an officer and the failure of the Board to consider this demonstrates that the promotion process was flawed and not truly competitive. However, plaintiff's list was not a part of the process and irrelevant to the Board's decision.

¶ 29 As noted above, the promotion testing and rankings inherently required certain subjective judgments and observations. Plaintiff points to statements about his performance as a patrolman and argues that they were improper in the departmental evaluation because the departmental evaluation ranking forms required analysis of ability to perform as an officer and ranking for the position sought. He contends that because the commentary was focused on his present position and not the position held the reviews were deficient and evidence of unfair competition.

¶ 30 Plaintiff also argues that the Board failed to take into account the statements of one commander who made positive comments and gave him a rank of six on the comparative rankings. Plaintiff's reliance on the positive comments of one evaluator is misguided as the commander rated several candidates higher than plaintiff. The statements on the ranking forms related to plaintiff's job performance and were sufficient to support the various rankings applied

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for the position plaintiff sought. From this we find that plaintiff has failed to demonstrate that the evaluation and rankings in this case were prejudicial or partisan, or that the result was against the manifest weight of the evidence.

¶ 31

III. CONCLUSION

¶ 32 For the reasons stated, we affirm the judgment of the Board and the circuit court.

¶ 33 Affirmed.