FOURTH DIVISION
August 6, 2015

No. 1-14-1954

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JOSEPH MARIGLIANO, Plaintiff-Appellee, v. THE BOARD OF FIRE AND POLICE COMMISSIONERS OF THE VILLAGE OF LYNWOOD; COLLEEN HANSON, ISAAC CLARK, and TOM LOCKTON, as Commissioners of the Board of Fire and Police Commissioners of the Village of Lynwood; MICHAEL MEARS; and THE VILLAGE OF LYNWOOD, Defendants-Appellants,	)	Appeal from the Circuit Court of Cook County. No. 13 CH 14232 Honorable Mary L. Mikva, Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Justices Howse and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: Board did not act arbitrarily or unreasonably in finding that cause existed to justify plaintiff's discharge. Trial court's order holding the board in contempt of its order requiring plaintiff's reinstatement is affirmed. Affirmed in part, vacated in part, and remanded.

¶ 2 During an attempt to apprehend a suspect, plaintiff Joseph Marigliano, a police officer with the Village of Lynwood, left his squad car running and did not engage a "lockout switch"

that would have prevented the car from being put into gear. The suspect stole plaintiff's car and led the police on a high-speed chase that ultimately resulted in the suspect crashing plaintiff's car. Michael Mears, Lynwood's chief of police, brought charges before the board of fire and police commissioners of the Village of Lynwood (the board), seeking plaintiff's termination. The board found that plaintiff's actions constituted "cause" and ordered that plaintiff's employment be terminated.

¶ 3 Plaintiff filed a complaint for administrative review in the circuit court of Cook County. The circuit court upheld, in large part, the board's findings of fact but reversed the board's finding of cause and remanded for consideration of a punishment less severe than discharge. However, on remand, the board ignored the trial court's directions and again ordered that plaintiff be discharged. The trial court, in response to the board's intransigence, then directed the board to impose a 30-day suspension, the maximum possible penalty other than discharge. After the board refused to meet and alter the sanction, the trial court held the board in contempt. The board then ordered plaintiff reinstated.

¶ 4 Defendants, the board, its commissioners, Mears, and the Village of Lynwood, appeal, asserting that the board's finding of cause was not unreasonable or arbitrary, and the trial court erred in reversing it. Defendants also appeal the trial court's order holding it in contempt, claiming that the board did not act in contempt by failing to take any action on the court's orders, and the trial court lacked authority to order plaintiff's reinstatement.

¶ 5 For the reasons stated below, we vacate the trial court's judgment finding that the board lacked cause to discharge plaintiff. Affording proper deference to the board's cause determination, we cannot say that a finding of cause was unreasonable or arbitrary. We remand

the cause for consideration of other claims raised in plaintiff's complaint for administrative review that the trial court did not address.

¶ 6 However, we affirm the trial court's contempt order. The board was required to modify its sanctions in accord with the trial court's orders, even if the board believed that those orders were erroneous. And the trial court did not exceed its authority when entering its orders.

¶ 7 I. BACKGROUND

¶ 8 A. Board Proceedings

¶ 9 On March 3, 2013, Mears brought charges before the board seeking plaintiff's discharge. The board's hearing on the charges was conducted on various dates between March 11, 2013 and May 13, 2013. The hearing proceeded in two stages. First, the board determined whether plaintiff committed the violations alleged in the chief's charges. After finding that plaintiff had, in fact, committed those violations, the board then determined the proper discipline for plaintiff's conduct.

¶ 10 1. *Evidence of the Incident*

¶ 11 The facts of the incident that led to the theft of plaintiff's squad car were undisputed. Plaintiff received a call for assistance from Sergeant Jessie Hernandez around 3:30 a.m. on December 11, 2012. Hernandez was conducting a traffic stop of a van that matched the description of a vehicle driven by Brian Stewart, a man wanted for stabbing his girlfriend. Plaintiff believed Stewart to be violent and dangerous, as Stewart had previously been charged with a home invasion in Lynwood during which he struck an elderly woman with a shovel. When plaintiff arrived on the scene, he saw Hernandez, who had parked his squad car behind Stewart's van, approach Stewart's car on foot. Stewart jumped out of the van and fled as plaintiff was parking his squad car in front of Stewart's van to block it. Plaintiff left his car and began to

chase Stewart, leaving his squad car unlocked and running with the keys in the ignition. Plaintiff's car had a lockout switch, which would have allowed plaintiff to remove the keys from the squad car but keep the car running. Unless the keys were reinserted, the lockout switch prevented the car from being driven. Plaintiff did not engage the lockout switch before chasing Stewart.

¶ 12 As plaintiff and Hernandez chased Stewart, Hernandez slipped and fell "hard" on the pavement. Hernandez was "dazed" from the fall and plaintiff stopped to make sure Hernandez was not hurt. As plaintiff stopped and spoke to Hernandez, Stewart doubled back to plaintiff's squad car, jumped in, and drove away.

¶ 13 Officer Melnyczenko of the Sauk Village Police Department testified that, on the early morning in question, he was on duty as a regular patrolman when a call came over ISPERN, the Illinois State Police radio band that municipal police departments use to communicate with one another. The call advised him that a marked squad car had been stolen near Glenwood-Dyer Road and Route 30. Melnyczenko responded, heading toward Sauk Trail Road and Interstate 394.

¶ 14 As he was turning northbound onto I-394, Melnyczenko spotted a Lynwood Police Department squad car. Believing that car to be the stolen vehicle, he activated the emergency lights on his vehicle and pursued the squad car at speeds that reached 80 miles an hour. The stolen squad car then exited off I-394 onto Route 30, driving over the median of Route 30 and heading westbound in the eastbound lanes of Route 30. The stolen car, in other words, was driving the wrong way down Route 30.

¶ 15 In the process of crossing over the median, the stolen squad car punctured two tires. It also nearly collided with a Cook County Sheriff's unit traveling eastbound in the eastbound lane.

Melnyczenko testified that the sheriff's vehicle swerved to avoid impact but came "probably like within ten feet" of a head-on collision. The stolen squad car then attempted to turn off Route 30, but the left-side tires of the squad car struck the curb, and the car came to a stop. The suspect, Stewart, attempted to flee on foot, but Melnyczenko apprehended him with a taser.

¶ 16 Most of the conflicting evidence at the hearing dealt with the practice of using lockout switches. Plaintiff, who had been a police officer for 15 years at the time of the hearing, knew of the lockout switch in his car and had used it in the past. But he insisted that he did not have time to engage the lockout switch on December 11, 2012. According to plaintiff, it took "[a] couple seconds" to use the switch. He said that Hernandez needed assistance immediately because Stewart was a dangerous person and Stewart could have hurt Hernandez in the few seconds it would have taken plaintiff to engage the lockout switch. Plaintiff acknowledged that he did not see Stewart armed with any weapons that day.

¶ 17 Chief Mears testified that he had been a police officer for 10 years and the chief of the Lynwood police department since 2011. Mears opined that, during the December 11 chase, plaintiff violated several department rules because "[h]is actions that night facilitated the stealing of a police squad car which was involved in—which was subsequently involved in a high speed pursuit which placed the general public as well as the officers involved in the incident *** in danger." Mears believed that the chase could have been avoided had plaintiff used the lockout switch in his car.

¶ 18 Mears testified that it was the practice of the Lynwood police department to use lockout switches before and after he became chief. Mears said that Lynwood police officers were shown how to use a lockout switch during their field training and were advised of the importance of using lockout switches. He also said that "every officer should use the lockouts several, if not a

dozen times a day while on duty." Mears believed that it took "[l]ess than half a second" to engage a lockout switch. Mears opined that, by "facilitating" the theft of his squad car, plaintiff made the Lynwood police department "look inept" in the eyes of the public and other police departments. Mears also said that, as a result of the chase, plaintiff's squad car was totaled and cost the department approximately $5,700.

¶ 19 On cross-examination, Mears admitted that he had left his keys in his squad car in the past. He said that he "possibly" left his own keys in his car during a dangerous situation. He also conceded that there was no written policy about officers leaving their keys in their vehicle or leaving a squad car while it is running. Mears could not identify, with specificity, all of the officers of other departments who had called his department inept, though he did mention some and discussed generally the reactions he received in various settings following the incident. When asked if he was aware of any other police officer in the country who had been fired for leaving their keys in the vehicle, Mears replied, in part, "[H]e's not being fired for that. He's been brought up on charges because he had his squad car stolen. That was just a factor in the squad car getting stolen."

¶ 20 In his case in chief, plaintiff presented the testimony of several other Lynwood police officers who, although they were not present for the chase, testified regarding their use of lockout switches. Officer Brian Dorian, an officer for 13 years, testified that he left his keys in his squad car "[e]very time" while conducting a traffic stop. Dorian did not use his lockout switch during traffic stops, and he believed that it took three or four seconds to activate a lockout switch. Dorian also testified that he knew of an incident during which Chief Mears exited his squad car to apprehend a suspect, left it running, and his squad car rolled into another car, though he conceded on cross-examination that his memory might have been incorrect and it may have

been another vehicle that rolled into Mears. Dorian did not believe that the department had become the "laughing stock" of other departments because plaintiff's car had been stolen.

¶ 21 Sergeant Phillip Bukovic, who had been a police officer for 25 years, testified that he had left his keys in his squad car before. He was not aware of anyone saying that the department was a laughing stock.

¶ 22 Officer Jose Perez, a 13-year Lynwood police officer, testified that he had left his keys in his car without engaging the lockout switch in the past. He said it was common for officers to do so because, "[i]f you're chasing somebody, you don't actually think about hitting the *** switch."

¶ 23 The board sustained the charges based on the above evidence.

¶ 24 2. *Disciplinary Hearing*

¶ 25 In the disciplinary phase of the hearing, Mears testified in aggravation. Mears asserted that plaintiff's failure to secure his squad car created an "undue risk" to the public and other police officers and violated department rules regarding the exercise of caution when using a squad car.

¶ 26 Mears also testified to the contents of plaintiff's personnel file. A 2006 memorandum said that plaintiff needed to be monitored with respect to his report writing, anger management, reaction to stress, acceptance of supervision, compliance with rules, and self-control. On July 8, 2010, plaintiff received a letter of reprimand for failing to handle a call properly. The letter stated that plaintiff did not "even do a basic investigation on [the] call," which turned out to be for an aggravated battery and robbery, and that "this type of sloppy police work has become common with your shift in the past years." The letter informed plaintiff that the chief would be "monitoring [plaintiff's] performance and conduct."

¶ 27 Mears also testified that plaintiff received a one-day suspension in 2011 regarding his handling of a different battery call. The victim had initially said that he did not want to sign a complaint but then changed his mind. Plaintiff did not allow the victim to sign the complaint and did not put that fact into his report; instead, he acted as though "it did not happen."

¶ 28 Next, Mears testified that plaintiff was suspended for three days in 2012. Plaintiff had refused to arrest a suspect with an active warrant and failed to report a call of domestic violence. Plaintiff responded to a domestic disturbance call and learned that a woman at the scene had an outstanding warrant. But plaintiff did not take the woman into custody. When other officers asked plaintiff why he did not arrest the woman, he told them " 'not to worry about it.' " Plaintiff did not complete "any type of report" regarding the call. The order of suspension said that plaintiff "willfully and knowing[ly] refused to arrest" the suspect, even though plaintiff knew that he had "no discretion i[n] arresting persons with warrants." The order of suspension also noted that plaintiff had "not acknowledged that [he] had a lapse of judgment in this situation," which led Mears to believe that plaintiff did "not believe [that he had] done anything wrong."

¶ 29 Finally, Mears testified that plaintiff had been suspended for two days in early 2013. Plaintiff had been cited by the Oak Lawn police for failing to obtain a license for his personal dog, after plaintiff's dog bit an officer. About six months later, he was again warned by the Oak Lawn police to get a dog license. Over a year after he was cited, plaintiff told Mears that he "did not feel it was a big deal" that he had been ticketed and that he had still not obtained the dog license. Mears testified that this incident showed plaintiff's "disregard of the law, and that he *** exercise[d] very poor judgment." Mears said that plaintiff's refusal to obtain the dog license showed that plaintiff believed that he "may be above the law and [did not] have to listen to outside departments."

¶ 30 Mears said he had taken several steps to improve plaintiff's performance. He had sent plaintiff to counseling and training sessions. Mears believed that those efforts were unsuccessful and that plaintiff had "continuously shown ineptitudes" in his performance. Mears recommended that plaintiff be discharged.

¶ 31 On cross-examination, Mears testified that he told plaintiff that, when he became chief, he was "wiping the slate clean." Mears said that this meant that, "as it pertains to any grievances anybody may have had with [Mears] ***, that everyone would have a fair opportunity." When shown a picture of plaintiff's damaged squad car, Mears could not identify "what[was] totaled about it," because "[i]t was mostly undercarriage damage." In the picture, Mears could only identify one flat tire.

¶ 32 In mitigation, plaintiff presented two witnesses. Pete Balderas, an employee with the Illinois Fraternal Order of Police Labor Council, testified that he attended a meeting with plaintiff and Mears on August 1, 2012. At that meeting, Mears said he wanted to dispel any rumors that plaintiff was "being picked on." According to Balderas, Mears said that he "would be wiping the slate clean." Balderas said that plaintiff had filed several grievances through the union, but he did not have any reason to believe that plaintiff was being fired in retaliation for his union activity.

¶ 33 Chief James Paoletti of the Crete police department testified as an expert regarding the discipline of police officers. Paoletti believed that Mears failed to use progressive discipline toward plaintiff. Paoletti noted that he uses annual evaluations to highlight an officer's weak and strong points, but that Mears had never done an annual evaluation of plaintiff. Paoletti opined that plaintiff's history of discipline "show[ed] nothing pertinent that would lead up to a termination for this type of event." Paoletti noted that plaintiff "was trying to apprehend a

forcible felon" and "acting as a good policeman." Paoletti described plaintiff's failure to remove the keys from his squad car as a "slight oversight" and "minor infraction." Paoletti said that "to take a man's livelihood because he was attempting to apprehend a felon, and *** aid *** another officer that had fallen *** would be absolutely ludicrous."

¶ 34 At the close of the hearing, the board determined that plaintiff should be discharged from duty.

¶ 35 3. *The Board's Findings*

¶ 36 After the hearing had concluded, the board issued its written findings. The board found that plaintiff's actions constituted cause sufficient to warrant his discharge. The board found that the lockout switch would have taken plaintiff, by his own admission, "a couple of seconds" to activate and that it would have "prevent[ed] someone from driving a vehicle that they should not be driving." The board noted that plaintiff admitted that he was familiar with how to use the lockout switch in his car.

¶ 37 In addressing what it perceived as the gravity of the violations it had found, the board wrote as follows:

> "This case is not about a police officer who stops for a cup of coffee, leaves his car running and unlocked and subsequently has his squad stolen. Such a scenario is bad enough although the officer in such a scenario would not be thinking that someone could possibly steal his vehicle when he goes into a shop to get a cup of coffee.
>
> Whereas in this case, however, the police officer is responding to a serious call where the apprehension of a suspect of a felony is involved and the suspect takes off running[,] requiring the officer to exit his squad[;] the officer has to be aware of the possibility of and the danger and mayhem which could be caused by the suspect being

> able to run back to the squad and driving away with the squad. In this case, [plaintiff] must be able to comprehend that the suspect will not want to be apprehended and will drive off in the squad car given the chance. [Plaintiff] must draw on his 15 years of law enforcement experience to make the right call. The right call in this case was the simple and effective step of activating the lockout switch before exiting the squad."

¶ 38 The board further found that the incident "made the Lynwood Police Department look bad, like buffoons, caused the Department to have a black eye and lowered morale."

¶ 39 The board found that plaintiff's conduct had violated two rules of the Lynwood police department. The first, entitled General Order 10-1, provided:

> "**On-duty Action** – Sworn employees shall act to protect life, liberty or property, to enforce all laws, to detect the commission of crimes and to apprehend violators.
>
> **General Knowledge and Performance** – Sworn employees will familiarize themselves with all statutes, ordinances and regulations necessary for the proficient execution of their duty.
>
> **Attention To Duty** – Employees will attend to assigned duties in a businesslike, courteous and professional manner without any unnecessary delay.
>
> **Damage to Equipment or Vehicles** – Employees will exercise due caution while using Village owned equipment or vehicles. Employees found to have damaged any equipment or vehicle through their fault are subject to disciplinary actions deemed appropriate by the Chief of Police, or a designee. This will include employees involved in vehicle crashes with a determination of fault.
>
> **Conduct Unbecoming a Police Officer** – Sworn employees may be subject to disciplinary actions for the following:

Conduct tending to cast disrepute on the Department

Conduct contrary to public peace or welfare

Any malfeasance, nonfeasance or misfeasance of duty" (Emphases in original.)

The second, General Order 12.2, stated:

> "ALL EMPLOYEES OPERATING A DEPARTMENT VEHICLE WILL EXERCISE DUE REGARD TO THE SAFETY OF ALL PERSONS. **NO POLICE RESPONSE IS OF SUCH IMPORTANT** [*sic*] **THAT THE PRINCIPLES OF SAFETY BECOME SECONDARY**. EMPLOYEES WILL BE HELD STRICTLY ACCOUNTABLE FOR THE CONSEQUENCES OF THEIR RECKLESS DISREGARD TO THE SAFETY OF OTHERS." (Emphasis in original.)

The board did not specify which parts of these rules plaintiff had violated. The board also found that, in light of its findings of fact and plaintiff's "work record and previous disciplinary actions," plaintiff had "demonstrated a substantial shortcoming which renders continuance in employment detrimental to the efficiency of the" police department. The board ordered that he be discharged.

¶ 40 B. Trial Court Proceedings

¶ 41 Plaintiff filed a complaint for administrative review of the board's decision in the circuit court of Cook County. Plaintiff alleged that the board's decision to terminate him was against the manifest weight of the evidence, as it was reasonable for plaintiff to leave his keys in his car in light of the emergency situation he confronted. Plaintiff also asserted that the board suffered under a conflict of interest and was biased.

¶ 42 On February 27, 2014, the trial court entered its opinion and order on plaintiff's complaint for administrative review. The trial court, while noting that it was "unclear *** precisely which portion of the Code of Conduct [plaintiff] was found guilty of violating," found

that the evidence supported a finding that plaintiff violated the Lynwood police code of conduct because he "caused damage to Village owned equipment or vehicles." The court wrote, "Although no specific rule required [plaintiff] to engage the lockout mechanism before exiting his car, his conduct could be viewed as a lack of 'due caution' while using a Village squad car and he could have been found at fault for the damage to the car." The court also found that the evidence supported the board's finding that plaintiff violated the rule "requir[ing] him to exercise due regard for the safety of others in operating Department vehicles."

¶ 43 The court noted that, to the extent the board's decision rested on a finding that plaintiff engaged in conduct tending to cast disrepute on the department, that finding was "troubling." The court, while "accept[ing] the Board's finding that Chief Mears was credible," stated that Mears "offered absolutely no specifics as to how this incident impacted public perception or even as to who in the public was supposed to have been influenced."

¶ 44 However, the court ultimately concluded that it was unnecessary to determine whether the board's finding regarding disrepute was against the manifest weight of the evidence, because the board lacked cause to discharge plaintiff. The court noted that the board's finding of cause was entitled to deference, but it articulated four reasons why cause did not exist in this case.

¶ 45 First, the trial court noted that plaintiff could only be fairly blamed for failing to engage the lockout switch; Stewart's theft of the squad car and the resulting chase were "intervening criminal actions for which [plaintiff] cannot be held responsible." Second, the court noted that no department rule required officers to engage the lockout switches before exiting their vehicles. Third, the court found that plaintiff's "conduct must be examined in light of the mitigating circumstances," including the fact that plaintiff was attempting to apprehend a suspected felon who could have been armed. Fourth, while the court agreed that plaintiff's prior disciplinary

history was relevant, his history did not rise to the level of cause because it did not show that plaintiff "was perpetually in trouble" throughout his six-year tenure with the department or that his prior discipline "left him in a probationary status." The court reversed the board's finding of cause and remanded "for consideration of appropriate discipline."

¶ 46 On remand, without hearing any additional evidence, the board again concluded that termination was the appropriate sanction for plaintiff. On May 22, 2014, the trial court then ordered that the board change its sanction from termination to a 30-day suspension. The trial court noted that its order was final and appealable, but that the board was required to comply with it. The trial court denied defendants' motion to stay enforcement of the judgment.

¶ 47 On May 28, 2014, plaintiff filed a motion in the trial court seeking an order compelling the board to comply with the May 22, 2014 order. Plaintiff asked the trial court to order his reinstatement because he had already served the maximum 30-day suspension.

¶ 48 On June 11, 2014, plaintiff filed a petition for a rule to show cause, seeking an order to compel the board to explain why it was not in contempt of the trial court's May 22, 2014 order. Simultaneously, plaintiff filed a petition for a writ of *mandamus* compelling the board to comply with the May 22, 2014 order.

¶ 49 On June 12, 2014, the trial court held a hearing on the enforcement of its May 22 order. Defendants asserted that the trial court lacked authority to order plaintiff's reinstatement. The trial court found that its order was "crystal clear" regarding the sanction the board was required to impose but entered a supplemental order "to disabuse the Board of any notion that [it] can comply with that order without reinstating [plaintiff] to his position as a police officer." The court entered an order, specifying "that reinstatement [was] a necessary part of" the May 22 order. On June 20, 2014, defendants filed a notice of appeal from the trial court's May 22 order.

¶ 50 On July 9, 2014, after defendants had filed their notice of appeal, the trial court held a hearing on plaintiff's motion for a rule to show cause and petition for *mandamus* relief. Defendants' counsel conceded that the board had taken no action to comply with the court's prior orders. The court noted that, because plaintiff had served the 30-day suspension the court had imposed, he was entitled to be reinstated. The court found that the board's refusal to reinstate plaintiff was "a refusal to follow [its] order to impose a sanction less than discharge." Because the board had done "absolutely nothing" to comply with the court's May 22, 2014 order, the court held the board in contempt. The court imposed a $1,000-per-day fine for every day that the board remained in contempt. Defendants filed an amended notice of appeal from the trial court's contempt order.

¶ 51 On July 14, 2014, the board entered an order imposing a 30-day suspension against plaintiff and ordering that he be reinstated. While the board noted that it "continue[d] to believe that the proper discipline is termination," the board entered its order "in obedience to the Circuit Court."

¶ 52 II. ANALYSIS

¶ 53 A. Cause

¶ 54 Defendants first contend that the board possessed sufficient cause to justify plaintiff's discharge. In reviewing a decision under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2012)), we review the decision of the board, not the trial court's review of the board's decision. *Rodriguez v. Weis*, 408 Ill. App. 3d 663, 668 (2011). Our typical deference to a trial court's findings of fact do not apply on administrative review, because the trial court does not observe the witnesses or weigh their credibility; the trial court is looking at the same cold record as this court. Our review of the decision to discharge an employee generally follows two steps:

(1) we determine whether the board's findings of fact are contrary to the manifest weight of the evidence; and (2) we then determine whether those findings of fact form a sufficient basis for the conclusion that cause for discharge existed. *Id.*

¶ 55 In the circuit court, plaintiff challenged the board's findings of departmental violations as well as the discipline it imposed, thus requiring the trial court to engage in the two-step analysis mentioned above. The court ruled that the board had properly found plaintiff in violation of departmental rules but agreed with plaintiff that cause for discharge was lacking. Plaintiff did not appeal the circuit court's ruling on the finding of departmental violations and thus does not ask us to overturn the board's findings of fact as to plaintiff's violation of those rules. Plaintiff does not even contest that he should be subject to the greatest departmental discipline short of termination—a 30-day suspension—noting in his brief that he "is not challenging the imposition of a 30-day sanction." We will thus confine our review to the second step of the analysis, whether the board's findings of fact constitute sufficient cause for the maximum discipline of discharge from the force. See *Siwek v. Police Board of City of Chicago*, 374 Ill. App. 735, 738 (2007); *Martin v. Matthys*, 149 Ill. App. 3d 800, 805 (1986).[1]

¶ 56 A police officer may not be discharged absent "cause." 65 ILCS 5/10-2.1-17 (West 2012). "Cause" means "some substantial shortcoming which renders [the employee's]

[1] Plaintiff claims that he does take issue with some of the findings by the board—the findings that plaintiff engaged in "conduct unbecoming a police officer" and "conduct tending to cast disrepute on the Department." The trial court found those charges "troubling" from a constitutional standpoint and noted that "[t]he evidence here is extremely slim to support" those charges, but ultimately the trial court neither accepted nor rejected those findings by the board. In light of our resolution of this matter, we do not base our decision in any way on those charges and will not consider them further.

continuance in his office or employment in some way detrimental to the discipline and efficiency of the service and something which the law and a sound public opinion recognize as a good cause for his [discharge]." (Internal quotation marks omitted.) *Launius v. Board of Fire and Police Commissioners of City of Des Plaines*, 151 Ill. 2d 419, 435 (1992).

¶ 57 Our task is not to consider whether a more lenient sanction may have been more appropriate, nor may we reweigh the aggravating and mitigating facts presented to the agency. *Id*. at 435-36; *Bultas v. Board of Fire and Police Commissioners of City of Berwyn*, 171 Ill. App. 3d 189, 197 (1988). An agency's finding of cause justifying discharge is entitled to "considerable deference" and may be overturned "only if it is arbitrary and unreasonable or unrelated to the requirements of service." *Walsh v. Board of Fire and Police Commissioners of Village of Orland Park*, 96 Ill. 2d 101, 105-06 (1983). Because police departments are paramilitary organizations that require disciplined officers to function effectively, we have long held that, in the appropriate case, an officer's violation of even a single rule may be sufficient grounds for discharge. *Chisem v. McCarthy*, 2014 IL App (1st) 132389, ¶ 23; *Kinter v. Board of Fire and Police Commissioners*, 194 Ill. App. 3d 126, 134 (1990). Still, misconduct found to be merely trivial is an unreasonable and arbitrary basis for discharge. *Roman v. Cook County Sheriff's Merit Board*, 2014 IL App (1st) 123308, ¶ 145.

¶ 58 The sanction imposed by the board was undoubtedly harsh, as harsh as it could be, but as the case law above makes clear, the question is not whether the members of this court would have imposed the same sanction. The question is whether the sanction of discharge was arbitrary, unreasonable, or unrelated to the requirements of service. We hold that it was not. We thus uphold the penalty of termination imposed by the board.

¶ 59 There is no dispute that plaintiff's actions were related to the requirements of his service. Nor would we characterize plaintiff's misconduct as trivial or insubstantial. Plaintiff's failure to use his lockout switch allowed a felony suspect to steal his squad car and use it in a high-speed chase that led to the car being damaged and placed responding officers at great personal risk, including a sheriff's deputy who had to brake and swerve his vehicle to avoid a head-on collision with the stolen squad car on Route 30.

¶ 60 The board was also justified in considering plaintiff's disciplinary record. See *Duncan v. City of Highland Board of Police and Fire Commissioners*, 338 Ill. App. 3d 731, 737 (1997) (board properly took into account plaintiff's prior discipline in determining whether cause existed). Plaintiff had been suspended three times by Mears and his predecessor for conduct occurring shortly before the theft of plaintiff's squad car. First, plaintiff refused to let an alleged battery victim sign a complaint, then failed to document the victim's desire to sign the complaint in a report. Second, he refused to arrest a suspect with an active arrest warrant even though, under department rules, he had no discretion in deciding whether to execute an arrest warrant. Then, after refusing to arrest the suspect, he told other officers to ignore it. Third, he failed to get a license for his personal dog, was ticketed for that failure, and refused to get a license for more than one year after he had been ticketed.

¶ 61 Thus, two of plaintiff's suspensions arose out of plaintiff's failure to properly handle investigations. As Mears testified, these incidents of misconduct showed that plaintiff had failed to exercise his duties as an officer. Mears also opined that plaintiff's on-the-job performance had grown worse over time: it started with a failure to investigate a call, then turned to a refusal to let a witness sign a complaint, and culminated with a refusal to execute an arrest warrant. In each instance, plaintiff failed to complete accurate reports. And even the suspension related to

plaintiff's off-duty conduct—his failure to obtain a dog license—showed that plaintiff had ignored another police department's command and thought that his violation of the law was not a "big deal." The board did not act unreasonably or arbitrarily in viewing this disciplinary history as support for plaintiff's discharge.

¶ 62 Plaintiff's argument on appeal focuses on his claim that he did not act improperly during the incident. He notes that several officers testified that they leave their keys in their squad cars without engaging their lockout switches—even when conducting traffic stops—and that plaintiff should not be discharged for assisting Hernandez in a dangerous emergency. In essence, plaintiff asks us to reweigh the mitigating factors presented to the board. We may not do so. Instead, we may only ask whether the board's finding of cause was arbitrary, unreasonable, or unrelated to plaintiff's service. In light of plaintiff's failure to exercise due caution during his pursuit of Stewart, as well as his disciplinary record, we cannot make such a determination.

¶ 63 Moreover, though we are not reviewing the trial court's ruling but rather conducting an independent analysis of the board's findings, we respectfully disagree with the reasoning of the able trial judge. In rejecting termination as a permissible sanction, the trial court first noted that the board's decision "conflates [plaintiff's] failure to engage the lockout switch with the suspect's theft of the car and resulting high-speed chase," while in the trial court's view, "[o]nly the failure to engage the lockout switch can be fairly attributed to [plaintiff]."

¶ 64 We would not disassociate plaintiff's failure to engage the lockout switch from the resulting theft of the squad car. Preventing theft of the vehicle is the very purpose of engaging the lockout switch in the first place. And in the context of this case, plaintiff's failure to engage the lockout switch made the car vulnerable to theft not merely by any member of the general public, but specifically by a suspected dangerous felon who was eluding police.

¶ 65 The board provided this exact reasoning in its decision, noting that the situation at issue was not one where a police officer made a leisurely stop for coffee and forgot to engage the switch but that, to the contrary, this situation represented the very scenario where engaging the lockout switch was the most important—where a dangerous suspect was resisting apprehension and could be expected to do just about anything to avoid capture. We cannot say that the board's reasoning was arbitrary or unreasonable.

¶ 66 Moreover, one of the rules that the board found plaintiff to have violated, Rule 12.2.1, not only provided that officers "operating a department vehicle will exercise due regard for the safety of all persons," but also stated that "[e]mployees will be held strictly accountable for the consequences" of their failure to do so. We do not think it was arbitrary or unreasonable for the board to hold plaintiff accountable for the consequences of his failure to engage the lockout situation under the circumstances present that night.

¶ 67 The second basis for the trial court's reasoning was that "[plaintiff] did not engage in any expressly prohibited conduct. No rule required [plaintiff] to engage the switch prior to exiting his vehicle." It is true that no rule expressly required plaintiff to engage the lockout switch. But Section 10.1.1 of General Rule 10-1 did require that plaintiff "exercise due caution while using Village owned equipment or vehicles," and, as noted previously, Section 12.2.1 of General Rule 12.2 likewise provided that "[a]ll employees operating a department vehicle will exercise due regard for the safety of all persons." Plaintiff does not deny the applicability of these provisions, nor does he dispute that he violated these provisions. The board's point was that this case was not singularly about the failure to engage a lockout switch in isolation, but rather that failing to engage the lockout switch *under these circumstances* presented a greater-than-usual risk of theft of the vehicle and, accordingly, warranted a greater-than-usual sanction. We are not free, as

judges, to substitute our judgment for that of the police board on the gravity of the violation that occurred here.

¶ 68 The final basis of the trial court's ruling, and the primary argument of plaintiff on appeal, is the exigent circumstances present during the incident. We agree that plaintiff faced extreme circumstances that night, and we are sympathetic to the argument that, because he was acting quickly to assist a fellow officer and catch a suspected dangerous felon, a good argument can be made that plaintiff should face discipline falling short of termination. But the board's position was that the exigency of the circumstances cut in the complete opposite direction—that a time of emergency is not the time to excuse plaintiff's conduct, but rather a time when the use of the lockout switch is most important, when the risk of the vehicle's theft is at its greatest, and when the consequences of theft would be the most dire. Whether we wholeheartedly agree with the board's assessment is not the issue. We cannot say that the board's position is arbitrary or unreasonable.

¶ 69 We couple the board's reasoning on the severity of the infraction here with plaintiff's disciplinary record, which showed what the chief and the board believed to be progressively worsening job performance. Taken together, we believe that the board's decision to terminate plaintiff was not unreasonable or arbitrary. We uphold the board's finding of cause to terminate plaintiff and vacate the trial court's order that reversed that finding of cause.

¶ 70 Despite our vacatur of the trial court's judgment, we decline to reinstate the board's decision discharging plaintiff. Plaintiff raised other issues in his complaint for administrative review, including issues regarding a possible conflict of interest and bias during his hearing. The trial court did not rule on these issues when it reviewed the board's judgment, and it would be improper for us to do so for the first time on appeal, without the benefit of adversarial

presentation. *City of Chicago v. Pooh-Bah Enterprises, Inc.*, 224 Ill. 2d 390, 449 (2006). We remand to give the trial court an opportunity to consider the remaining issues raised in plaintiff's complaint for administrative review.

¶ 71 B. Contempt

¶ 72 Defendants also challenge the trial court's decision to hold the board in contempt for failing to comply with its orders. Our holding above, that the trial court erred in reversing the board's decision to terminate plaintiff, does not mean that defendants were free to ignore the court's orders. The fact that an order is later found to be erroneous does not excuse a party from acting in contempt of that order. *Faris v. Faris*, 35 Ill. 2d 305, 309 (1966); *Country Mutual Insurance Co. v. Hilltop View, LLC*, 2014 IL App (4th) 140007, ¶ 26. Thus, we must still address whether defendants were properly held in contempt.

¶ 73 Defendants first cite the court's May 22, 2014 order, which directed the board to modify its sanction from discharge to a 30-day suspension. Defendants admit that they initially took no action in response to the May 22, 2014 order. But they claim that the board was not in contempt because the board was not required to take any further action to comply with the trial court's order. Citing *Norman v. Board of Fire and Police Commissioners of City of Zion*, 245 Ill. App. 3d 822 (1993), defendants argue that, because the order directed the board to impose a specific sanction, it "was not a remand" and "the Board was not required to meet to change [its] discharge order."

¶ 74 We reject this argument for three reasons. First and foremost, this argument ignores the clear language of the court's order, which read, "[The] *Board shall modify* the sanction imposed on May 13, 2013 from a discharge and removal to a 30[-]day suspension." (Emphasis added.) Defendants are thus incorrect that the order did not direct the board to take any action; it

explicitly told the board to modify its sanction. We are baffled as to how the board could have interpreted that order otherwise. Second, defendants' reliance on *Norman* is misplaced. In *Norman*, the court stated the general principle that an order directing the board to impose a specific sanction is a final order *for purposes of appeal*. *Norman*, 245 Ill. App. 3d at 829-30. Nowhere in *Norman* did the court say that the board could take no action in response to an order directing a specific sanction; the court simply said that the order could be appealed by the board because no additional *court* proceedings were required. Third, defendants' argument ignores the facts of the case. If, as defendants suggest, the trial court's order did not command the board to take any action, then defendant would have been reinstated shortly after the court entered the order because he had already served his 30-day suspension. But that did not happen. Plaintiff was not reinstated until the board was held in contempt and it modified its decision. Clearly, the board needed to take additional steps to comply with the court's order and ensure that plaintiff was reinstated.

¶ 75 Defendants next challenge the trial court's finding that it was in contempt of the court's June 12, 2014 order, which read, "This order supplements the order of the court of May 22, 2014, to specify that reinstatement is a necessary part of this Order ([a]lthough the court believes it was quite clear)." Defendants argue that the trial court lacked authority to order plaintiff's reinstatement, making its June 12, 2014 order void and not subject to a contempt order.

¶ 76 It is true that, where an order is void, a party may not be held in contempt for refusing to comply with it. *Faris*, 35 Ill. 2d at 309; *Hilltop View*, 2014 IL App (4th) 140007, ¶ 26. Administrative review is the "only area in which the legislature still determines the extent of the circuit court's jurisdiction" under Illinois law. *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 338 (2002). Thus, when conducting administrative review, an order

entered in excess of the trial court's statutory authority is void. *American National Bank & Trust Co. v. Dep't of Revenue*, 242 Ill. App. 3d 716, 719 (1993). Generally, a trial court conducting administrative review lacks the authority to order that an employee be reinstated with back pay. *Savaglio v. Board of Fire and Police Commissioners of Village of Oak Brook*, 125 Ill. App. 3d 391, 398 (1984).

¶ 77 But we reject defendants' characterization of the June 12 order as one in which the trial court "ordered" the board to reinstate plaintiff in this case. The trial court did nothing of the kind. What the trial court did, instead, was recognize the patently obvious: that the maximum penalty short of termination, a 30-day suspension, had already been ordered and had long since expired, but plaintiff still had not been reinstated to his position on the police force—he was, in essence, serving an indefinite suspension. We agree with the trial court's parenthetical note that it already should have been "quite clear" to the board that plaintiff was entitled to reinstatement.

¶ 78 Under Section 3-111(a)(6) of the Administrative Review Law, where a board has held a hearing and rendered a final decision, and the trial court has reversed and remanded that decision in whole or in part, the trial court has the additional authority to "give [the board] such other instructions as may be proper." 735 ILCS 5/3-111(a)(6) (West 2014). We find that the June 12 order, supplementing its order of May 22 to impose a 30-day suspension, was such an instruction.

¶ 79 We find support for our conclusion in *American National Bank & Trust Co.*, 242 Ill. App. 3d 716 (1993). In that case, the plaintiffs sought administrative review of the Department of Revenue's decision to deny them a property tax exemption. *Id.* at 719. The trial court entered an order "granting judgment for the plaintiffs and granting plaintiffs [the] property tax exemption." *Id.* On appeal, the court noted that the trial court had no authority to enter a judgment granting

the exemption under the Administrative Review Law. *Id.* Thus, if the court read the trial court's order "literally," it would have been void. *Id.* But the court declined to read the order literally because "the substantive effect of the order was the same as if the trial court had reversed the Department, an action that the Administrative Review Law would have authorized." *Id.* at 721. Thus, the court "treat[ed] the judgment of the trial court as a reversal *** rather than as an outright grant of the tax exemption." *Id.*

¶ 80 In this case, defendants ask us to read the June 12 order as an order requiring reinstatement, which could render the order void. We will not strain our reading of the June 12 order in a way that would make that order void, particularly when it seems quite obvious that the trial court's order was clarifying the practical effect of its May 22 order and was not imposing a new or different remedy.

¶ 81 Moreover, while defendants isolate the May 22 order and the June 12 order as not being proper subjects for a contempt citation, in fact the contempt order entered on July 9 clearly stated that the board was in contempt for failing to comply with the *three orders* the court had issued—the February 27, 2014 order reversing the termination of plaintiff and remanding for consideration of "appropriate discipline"; the May 22 order requiring the board to impose a 30-day suspension; and the June 12 order clarifying that, implicit in the May 22 order was the fact that plaintiff should be reinstated after serving the 30-day suspension.

¶ 82 We have no hesitation in upholding the trial court's contempt order. Indeed, the trial court showed remarkable restraint in dealing with a defiant board. To recap, on February 27, after reversing the finding of cause to terminate, the trial court first remanded the case for the board to consider "appropriate discipline." Though it should have been obvious to the board that the trial court's notion of "appropriate discipline" did not include the very sanction that the trial court had

already rejected as *inappropriate*, the board nevertheless ordered that same discipline the second time around. The trial court would have been well within its rights to hold the board in contempt at that stage. Instead, on May 22, the court ordered the board to impose the greatest discipline short of termination—a 30-day suspension—and the board completely ignored that order, too. Again, the trial court showed admirable patience in not citing the board for contempt and, instead, issuing its "clarification" order on June 12. By time the court ruled on the contempt motion on July 9, plaintiff had been out of work for well over a year, and his obvious right to reinstatement was being completely ignored by the board. The letter and spirit of the trial court's orders had been totally and utterly thwarted. The trial court gave the board one opportunity after another to comply with an order that was crystal clear since February 27, yet it took a contempt order on July 9 to force the board to comply.

¶ 83 It should go without saying that the board was required to respect and obey the trial court's orders, regardless of whether it agreed with them. A party wishing to challenge a trial court's order has many avenues at its disposal, including requests for stays and appeals to a reviewing court. Utter defiance is not one of them. And it obviously makes no difference that we have now vacated the trial court's ruling on the issue of cause for termination. The board's disobedience to the trial court was deplorable, and its arguments to this court justifying its behavior border on the facetious. We affirm the trial court's order finding the board in contempt.

¶ 84 III. CONCLUSION

¶ 85 For the reasons stated, we vacate the trial court's order finding that there was insufficient cause to justify plaintiff's discharge and remand for consideration of the remaining issues in plaintiff's complaint for administrative review. We affirm the trial court's order holding the board in contempt.

¶ 86 Trial court judgment regarding cause vacated and remanded; trial court contempt order affirmed.