2019 IL App (1st) 181598-U
Order filed: March 29, 2019

FIRST DISTRICT
Fifth Division

No. 1-18-1598

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ROBERT GEDVILLE, Plaintiff-Appellant, v. THE VILLAGE OF JUSTICE, a municipal corporation; KRAIG MCDERMOTT, individually in his capacity as Chief of Police of the Village of Justice Police Department and agent and/or employee of the Village of Justice, THE BOARD OF FIRE AND POLICE COMMISIONERS OF THE VILLAGE OF JUSTICE, GEORGE PASTORINO, individually and in his capacity as Commissioner of the Board of Fire and Police Commissioners and agent and/or employee of the Village of Justice, DON MCGUIRE, individually and in his capacity as Commissioner of the Board of Fire and Police Commissioners and agent and/or employee of the Village of Justice, MICHAEL MARUSZAK, individually and in his capacity as Commissioner of the Board of Fire and Police Commissioners and agent and/or employee of the Village of Justice and ERIK PECK, individually and in his capacity as attorney and hearing officer for the Board of Fire and Police Commissioners and agent and/or employee of the Village of Justice, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 2017 CH 09179 Honorable Sanjay Tailor, Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Lampkin concurring in the judgment.

ORDER

¶ 1 *Held*: We affirmed the order of the Board of Fire and Police Commissioners terminating plaintiff's employment as a lieutenant in the Village of Justice Police Department following a hearing. We held that the Board had jurisdiction to terminate his employment, and that the hearing was timely.

¶ 2 Following a hearing, the Board of Fire and Police Commissioners (Board) terminated plaintiff's, Robert Gedville's, employment as a lieutenant in the Village of Justice Police Department. On administrative review, the circuit court affirmed. Plaintiff appeals, contending that we should reverse the Board's decision and remand with directions to reinstate him to his position of lieutenant, because the Board lacked jurisdiction to terminate his employment, and because the hearing was untimely. We affirm.[1]

¶ 3 I. Relevant Ordinances and Statutes

¶ 4 The Village of Justice (Village) is a non-home rule municipal corporation in southwest Cook County. The Village has adopted Division 2.1 of the Illinois Municipal Code (65 ILCS 5/10-2.1-1 *et seq*. (West 2018)). Section 10-2.1.4 of Division 2.1 states in relevant part:

> "The [Board] shall appoint all officers and members of the fire and police departments of the municipality, including the chief of police and the chief of the fire department, unless the council or board of trustees shall by ordinance as to them otherwise provide." *Id*. §10-2.1-4.

¶ 5 Pursuant to section 10-2.1-4, the Village passed an ordinance empowering the Village President and the Village Trustees (collectively, the corporate authorities), rather than the Board,

[1] In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order stating with specificity why no substantial question is presented.

to appoint the chief of police. See section 9-3(b) of the Village Municipal Code, providing for the appointment of the police chief by the corporate authorities.

¶ 6 The process for terminating the Village's police chief is also set forth in section 10-2.1-4, which states in relevant part:

> "If the chief of the fire department or the chief of the police department or both of them are appointed in the manner provided by ordinance, they may be removed or discharged by the appointing authority. " *Id*. Section 10-2.1-17 similarly provides that only the appointing authority may remove the chief of police. See *id*. §10-2.1-17.

¶ 7 Section 10-2.1-4 further provides that a police chief who is discharged prior to attaining eligibility to retire on pension reverts to his previous position:

> "If a member of the department is appointed chief of police or chief of the fire department prior to being eligible to retire on pension, he shall be considered as on furlough from the rank he held immediately prior to his appointment as chief. If he resigns as chief or is discharged as chief prior to attaining eligibility to retire on pension, he shall revert to and be established in whatever rank he currently holds, except for previously appointed positions, and thereafter be entitled to all the benefits and emoluments of that rank, without regard as to whether a vacancy then exists in that rank." Id. §10-2.1-4.

¶ 8 The process for terminating rank-and-file police officers is set forth in section 10-2.1-17, which states:

> "[N]o officer or member of the fire or police department of any municipality subject to this Division 2.1 shall be removed or discharged except for cause, upon written charges, and after an opportunity to be heard in his own defense. *** The [Board] shall

> conduct a fair and impartial hearing of the charges, to be commenced within 30 days of the filing thereof, which hearing may be continued from time to time. In case an officer or member is found guilty, the [Board] may discharge him, or may suspend him not exceeding 30 days without pay. The [Board] may suspend any officer or member pending the hearing with or without pay, but not to exceed 30 days. If the [Board] determines that the charges are not sustained, the officer or member shall be reimbursed for all wages withheld, if any." *Id*. §10-2.1-17.

¶ 9 In *Szewczyk v. Board of Fire and Police Commissioners*, 2011 IL App (2d) 100321, the appellate court held that "the only reasonable interpretation of section 10-2.1-17 is that (1) the village president and corporate authorities discharge a police chief who is appointed by ordinance and (2) [the Board] discharge[s] rank-and-file police officers." *Id*. ¶55.

¶ 10 II. Background Facts

¶ 11 The relevant facts preceding the hearing in this case are undisputed and set forth as follows.

¶ 12 Plaintiff was hired as a police officer by the Village of Justice Police Department on July 1, 1993, and was promoted to lieutenant in 2004. In 2008, the corporate authorities appointed plaintiff to be chief of police.

¶ 13 On September 24, 2012, the Chicago Tribune published an article by David Kidwell entitled: "Police Camera Pitch Puts Cop in Hot Seat." The article reported on a mass email that plaintiff sent to mayors, presidents and police chiefs in suburbs from Kenilworth to South Chicago Heights, stating that he was a "consultant" for SafeSpeed, LLC, a red-light camera company and that he was "happy to promote their services." The article suggested that plaintiff's emails about SafeSpeed evidenced an inappropriate business relationship and conflict

of interest, because SafeSpeed was also a current vendor of the Village. The article also reported that plaintiff had initially lied to Mr. Kidwell about sending the SafeSpeed emails, but that he subsequently acknowledged sending them.

¶ 14 The same evening that the article was published, September 24, 2012, the Village placed plaintiff on a paid administrative leave, and he surrendered his badge, keys, and laptop computer. Deputy Chief Kraig McDermott became the acting chief of police. Village Trustee Melanie Kuban filed an affidavit requesting that "an internal investigation be conducted regarding the nature and extent of any financial relationship between [plaintiff] and SafeSpeed." The corporate authorities instructed Village Attorney Michael Cainkar to conduct the internal investigation.

¶ 15 Mr. Cainkar contacted Daniel Gaffney, a member of the Burbank Police Department who had experience conducting forensic computer examinations, and asked him to conduct a forensic examination of plaintiff's laptop computer. Mr. Gaffney conducted the forensic examination and reported that two files on the hard drive related to SafeSpeed had been deleted from the computer, and that "all of the emails that would have been around the time that the Village would have been dealing with SafeSpeed were deleted from the computer."

¶ 16 Mr. Cainkar interviewed Deputy Chief Michael Kurschner, who stated that plaintiff had told him in August 2011 that SafeSpeed had "offered him a job, that he would be paid a percentage of revenue received by municipalities that [plaintiff] was able to bring to the fold." Plaintiff offered Officer Kurschner a finder's fee of $1,000 if he was able to convince the chief of police of the Village of Sauk Village to sign a contract with SafeSpeed.

¶ 17 Mr. Cainkar also interviewed Acting Chief McDermott, who stated that plaintiff had asked him to contact the police chiefs in Alsip and Woodfield and convince them to sign a contract with SafeSpeed.

¶ 18 With this information, on October 1, 2012, Mr. Cainkar served plaintiff with a "Notice of Rights" under the Uniform Peace Officers' Disciplinary Act (UPODA) (50 ILCS 725/1 *et seq*. (West 2018)), which ordered him to appear at Mr. Cainkar's law offices on October 5, 2012, where he would be interrogated regarding the SafeSpeed emails as well as his financial arrangement with SafeSpeed.

¶ 19 During the interrogation, plaintiff admitted that he sent the SafeSpeed emails, and that they were "inappropriate" and brought "shame" on the police department and Village. Plaintiff admitted he had deleted the computer files, explaining that he was "embarrassed" by the emails and that "they weren't needed anymore." Plaintiff denied ever telling Officers Kurschner and McDermott that he had any type of financial relationship with SafeSpeed.

¶ 20 Mr. Cainkar concluded, from the entirety of the investigation, that the SafeSpeed emails brought the Department into disrepute because they "strongly implied" a financial relationship between plaintiff and SafeSpeed. Mr. Cainkar agreed with the conclusion in the Chicago Tribune article that the emails evidenced an inappropriate business relationship and a conflict of interest because SafeSpeed was a current vendor of the Village. Mr. Cainkar also concluded that plaintiff's deletion of the computer files and emails obstructed the Village's investigation and violated the Local Records Act (50 ILCS 205/1 *et seq*. (West 2018)).

¶ 21 Following Mr. Cainkar's investigation, the corporate authorities terminated plaintiff's employment in his capacity as both chief of police and lieutenant on December 13, 2012. Plaintiff was terminated prior to his having attained eligibility to retire on pension.

¶ 22 A. Plaintiff's Wrongful Termination Action

¶ 23 Plaintiff subsequently filed an eight-count, second amended complaint in the circuit court of Cook County against defendants on March 24, 2016, alleging wrongful termination. Plaintiff alleged he had been wrongfully discharged as chief of police without any reasons being filed with the corporate authorities, without a majority vote of the corporate authorities, and without being provided an opportunity to be heard in his own defense. Plaintiff further alleged in count VII that pursuant to section 10-2.1-4 of the Illinois Municipal Code, after his termination as chief of police he reverted back to his rank of lieutenant, and that pursuant to section 10-2.1-17, only the Board (and not the corporate authorities) had the authority to discharge him from his rank of lieutenant "for cause, upon written charges, and after an opportunity to be heard in his own defense." 65 ILCS 5/10-2.1-17 (West 2018). Plaintiff argued that the corporate authorities exceeded their authority by discharging him from his rank of lieutenant without written charges or a hearing before the Board, and he sought damages in excess of $50,000 for the wrongful termination.

¶ 24 On December 20, 2016, the circuit court granted plaintiff's motion for summary judgment on count VII. Defendants then moved to strike plaintiff's request for monetary relief under count VII and moved for an order to direct the Board to conduct a hearing as to whether plaintiff should be discharged from his position as lieutenant.

¶ 25 On February 3, 2017, the circuit court entered an order stating:

> "Pursuant to statute, when [plaintiff] was terminated as Chief of Police, his status reverted to the rank of Lieutenant. Section 10-2.1-17 of the Illinois Municipal Code requires the [Board] to hold a duly noticed hearing, upon written charges, before a rank

and file police officer can be removed or discharged. In [plaintiff's] case, such a hearing was never held.

Count VII of Plaintiff's second amended complaint pleads a cause of action for 'Wrongful Termination from Plaintiff's Reversionary Rank of Lieutenant pursuant to 65 ILCS 5/10-2.1-4 and 65 ILCS 5/10-2.1-17.' The prayer for relief seeks monetary damages in excess of $50,000 plus costs of suit. Defendants' motion to strike the prayer for monetary damages is well taken. Section 10-2.1-17 of the Illinois Municipal Code entitles unionized police officer[s] to a duly noticed hearing on written charges prior to discipline or termination. However, the statute does not provide for monetary damages.

Count VII is the only count of Plaintiff's cause of action that is still pending[2]. By striking the prayer for relief requesting monetary damages, and ordering the [Board] to conduct a fair and impartial hearing on written charges, the court divests itself of subject matter jurisdiction. On the court's own motion, this matter is dismissed pursuant to 735 ILCS 5/2-619(a)(1) for lack of subject matter jurisdiction."

¶ 26 The circuit court then ordered as follows:

"1. Defendants' 'Emergency Motion to Strike Plaintiff's Count VII Prayer for Monetary Damages and to Order the [Board] to Conduct a Hearing' is granted.

2. The prayer for relief of Count VII is stricken.

3. The [Board] shall conduct a duly noticed hearing on written charges, consistent with the body of this order.

[2] The appellate briefs do not indicate how the remaining seven counts of the second amended complaint were disposed of, but the parties are in agreement with the circuit court that none of those counts were still pending when the circuit court entered its final judgment on this case.

4. On the court's own motion, this matter is dismissed pursuant to 735 ILCS 5/2-619(a)(1) for lack of subject matter jurisdiction."

¶ 27 No party appealed the February 3 order directing a hearing before the Board.

¶ 28 B. The Written Charges

¶ 29 Twelve days later, on February 15, 2017, Acting Chief of Police Kraig McDermott filed written charges with the Board against plaintiff in his capacity as a lieutenant. The charges contained four counts of misconduct:

Count I: the improper SafeSpeed emails and Chicago Tribune article;

Count II: the destruction of public records and the impeding of an internal investigation;

Count III: false and misleading statements made during the UPODA investigation;

Count IV: his interference into the investigation of a sexual assault charge brought against a fellow officer, Carmen Scardine.

¶ 30 III. Testimony Taken At The Hearing Before The Administrative Board

¶ 31 A. Testimony As To Count I

¶ 32 On March 14, 2017, the Board commenced the disciplinary hearing on the written charges. With respect to count I, the improper SafeSpeed emails and Chicago Tribune article, Deputy Chief Kurschner testified to a conversation he had with plaintiff in August 2011, while at the Village of Justice "Summerfest." During the conversation, plaintiff stated, "We [are] all gonna be rich" and that "it was time to celebrate" because of a deal he had struck with SafeSpeed to be a consultant, whereby SafeSpeed would pay him a 2.5% commission "for each violation that was collected from SafeSpeed for any [municipality] that we brought in and had signed with SafeSpeed."

¶ 33 Deputy Chief Kurschner further testified that plaintiff offered him and McDermott "finder's fees" of $500-$1,000 for finding a municipality that would sign up with SafeSpeed. Plaintiff said that his "ultimate goal was to get 10 towns so that he could make over $100,000 a year and eventually retire from here."

¶ 34 Acting Chief McDermott testified similarly to Deputy Chief Kurschner regarding plaintiff's statements about his business relationship with SafeSpeed and his offers of finder's fees.

¶ 35 Plaintiff testified that throughout 2011, he sent many emails to municipalities actively promoting SafeSpeed, including emails that stated: "I am doing some consulting work for SafeSpeed." Plaintiff's promotional efforts for SafeSpeed peaked in August/September 2012, when he sent the mass SafeSpeed email to hundreds of Illinois municipalities. Plaintiff admitted that he did not have authorization from the Village to send the emails.

¶ 36 Plaintiff admitted that he initially lied to Chicago Tribune reporter David Kidwell about sending the SafeSpeed emails and hung up on him. Plaintiff subsequently acknowledged that the article placed the Village in a "bad light" and that he acted inappropriately by holding himself out as a consultant for SafeSpeed.

¶ 37 Officers Kurschner and McDermott testified about the public outcry in the Village resulting from the Chicago Tribune article and SafeSpeed emails. Specifically, Deputy Chief Kurschner testified that the red-light ticket adjudication process became a "circus" because alleged violators contested their tickets on the basis that "the fix was in, that the only reason they got the ticket was that so [plaintiff] could get money." Acting Chief McDermott testified that at the adjudication hearings, the alleged violators contested their tickets by claiming that the police department was "corrupt."

¶ 38 B. Testimony As To Count II

¶ 39 With respect to count II, the destruction of public records and impeding an internal investigation, plaintiff admitted in his testimony that within hours of being placed on administrative leave and surrendering his computer due to the publication of the Tribune article, he remotely logged into the police department computer system and deleted emails and two files pertaining to SafeSpeed. Plaintiff testified that he deleted the files because "I wasn't told I couldn't do it."

¶ 40 Village Attorney Cainkar testified that plaintiff's deletion of the emails and computer files obstructed the Village's investigation and violated the Local Records Act (50 ILCS 205/1 *et seq*. (West 2018)).

¶ 41 C. Testimony As To Count III

¶ 42 With respect to count III, false and misleading statements made by plaintiff during the UPODA interrogation, the Village provided evidence summarizing the following statements that plaintiff made during the UPODA interrogation: (1) that he had no expectation of financial remuneration from SafeSpeed; (2) that he did not talk to Deputy Chief Kurschner in August 2011 about SafeSpeed; (3) that he did not offer finder's fees to Deputy Chief Kurschner and to Acting Chief McDermott for their help in soliciting municipal business for SafeSpeed; and (4) that he deleted the SafeSpeed emails and computer files because they were not needed anymore. Deputy Chief Kurschner, Acting Chief McDermott and Village Attorney Cainkar testified to the falsity of those statements, as they recounted plaintiff's expectation of financial remuneration from SafeSpeed, his offers of finder's fees, and his deletion of the emails and computer files to "cover his tracks" and to obstruct the Village's investigation.

¶ 43 D. Testimony As To Count IV

¶ 44 With respect to count IV, the interference into the investigation of a sexual assault charge brought against Officer Scardine, Detective Malloy testified that the victim reported on May 6, 2012, that she was waiting for a cab at a local apartment complex when she was approached by Officer Scardine, who placed her into the back seat of his squad car. He then moved her into the front seat, drove away and parked in a secluded area, and forced her to perform oral sex.

¶ 45 Detective Malloy and his partner, Detective Plotke, informed plaintiff that the case should be forwarded to the Illinois State Police Integrity Unit due to the severity of the allegation. Plaintiff refused to contact the Illinois State Police, and instead contacted a "buddy" at the Cook County Sheriff's Police Department. Meanwhile, Detective Malloy and Detective Plotke conducted their own internal investigation. Detective Malloy testified that plaintiff interfered with their investigation by various comments he made to them, which indicated that he wanted them to exonerate Officer Scardine. Specifically, plaintiff called the victim a "whore" and a "b****," told them to "discredit" her, and ordered them to investigate her drinking habits and to find out how many extra-marital affairs she had. Plaintiff also called the victim directly, and made statements designed to discourage her from pursuing charges, such as by emphasizing that the investigation of the charges could lead to her husband discovering her extra-marital affair.

¶ 46 Following the investigation, Detectives Malloy and Plotke concluded that the victim was credible and they sustained the complaint, finding that Officer Scardine had violated 18 different police department policies. Detective Plotke advised plaintiff that the complaint had been sustained. Plaintiff ordered them to "take out the conclusion, to not sustain the complaint." Detective Malloy did as he was ordered and removed the conclusion section. Detective Malloy

testified to the inappropriateness of plaintiff interfering in their investigation and ordering them to remove the conclusion section.

¶ 47 IV. The Board's Decision

¶ 48 On May 31, 2017, the Board found plaintiff guilty of all four counts of misconduct and ordered that he be "removed and discharged as a police officer of the Village of Justice."

¶ 49 V. Complaint For Administrative Review

¶ 50 On February 2, 2018, plaintiff filed a complaint for administrative review in the circuit court. On June 14, 2018, the circuit court affirmed the Board.

¶ 51 VI. Plaintiff's Appeal

¶ 52 Plaintiff timely filed a notice of appeal from the court's June 14, 2018, order affirming the Board. On administrative review, the appellate court reviews the final decision of the administrative agency, not the decision of the circuit court. *Engle v. Department of Financial and Professional Regulation*, 2018 IL App (1st) 162602, ¶28.

¶ 53 On appeal, plaintiff argues that the Board lacked the jurisdiction to consider the written charges against him and to discharge him from his position as lieutenant. Specifically, plaintiff argues that: under section 10-2.1-4 of the Illinois Municipal Code, the corporate authorities had the exclusive jurisdiction to remove him from his position as police chief; after the corporate authorities removed him as police chief on December 13, 2012, he reverted to the position of lieutenant pursuant to section 10-2.1-4; although the corporate authorities' December 13, 2012, order also ostensibly removed him from his reverted position of lieutenant, the corporate authorities lacked the authority to do so, as section 10-2.1-17 provides that only the Board may remove a rank-and-file police officer after holding a hearing within 30 days of charges being filed against him; that the circuit court on February 3, 2017, directed the Board to hold the

requisite hearing on written charges as to whether plaintiff should be terminated from his position as lieutenant; that following this order, the acting chief of police filed four misconduct charges against him on February 15, 2017, and the Board held a hearing thereon in March 2017 and terminated him; but that the Board lacked jurisdiction to consider the four misconduct charges and to terminate him from his position as lieutenant, because the misconduct charges only related to his conduct and duties as chief of police, and not as a lieutenant. Whether the Board had jurisdiction is a question of law that we review *de novo*. *Austin Gardens, LLC v. City of Chicago Department of Administrative Hearings*, 2018 IL App (1st) 163120, ¶16.

¶ 54 Plaintiff contends that *Gorr v. Board of Fire and Police Commissioners*, 144 Ill. App. 3d 517 (1986), is dispositive as to the jurisdictional issue. In *Gorr*, the Trustees of the Village of Addison (Village Trustees) filed charges with the Board against Officer Gorr on November 8, 1983, which stated: (1) on September 21, 1983, while Officer Gorr was chief of police of the Addison Police Department, he heard a loud bang in the police station and failed to determine whether it was caused by the discharge of a firearm and failed to take any corrective action; (2) on October 10, 1983, he knew that Sergeant Hoffrage was planning to point his pistol loaded with a blank cartridge at a person in the police station and did not prevent this act but aided and abetted it by instructing Officer Hoffrage to alert the Communication Division; and (3) as to both incidents, he failed to take proper police action and file reports as required by departmental procedures. *Id*. at 518.

¶ 55 In January 1984, prior to a hearing of the charges by the Board, Officer Gorr's term as chief of police expired and the Village Trustees voted against his reappointment, whereupon he reverted to his prior rank of captain. *Id*. Officer Gorr thereupon moved to dismiss the pending charges on the grounds that they pertained to his conduct and duties as chief of police, and that

the Board lacked jurisdiction to consider such charges because under the Illinois Municipal Code, only the Village Trustees (and not the Board) had the authority to impose disciplinary measures against the chief. *Id*. The Board denied the motion to dismiss and held a hearing on the charges. *Id*.

¶ 56 After the hearing, the Board found that Officer Gorr had violated departmental rules related to the performance of duty and the obedience to laws and regulations, and it discharged him from his employment as a police officer. *Id*. at 520. Officer Gorr filed a complaint for administrative review in the circuit court, which reversed the Board's decision, finding that the Board "had no jurisdiction to entertain charges against Plaintiff as *Police Chief* because the allegations contained in the charges were predicated solely upon his administrative duties as Chief of Police." (Emphasis in the original.) *Id*.

¶ 57 The Board appealed. *Id*. The appellate court affirmed, noting that the shooting incidents upon which the charges were based took place in September and October 1983, at which time Officer Gorr held the position of chief of police, and the charges were directed to his conduct and duties as chief. *Id*. The appellate court further noted that under section 10-2.1-17, the Board may not hear disciplinary charges brought against the chief of police, but rather, such charges may only be considered by the appointing authority; the Board may only consider disciplinary charges when they are unrelated to an officer's conduct and duties as chief. *Id*. at 520-21. Therefore, the appellate court concluded that pursuant to section 10-2.1-17, "the Board lacked authority to discharge [Officer Gorr] on the basis of the charges brought against him as chief of police." *Id*. at 521. Only the Village Trustees, who had appointed Officer Gorr to the position of chief of police, could remove or discharge him based on those charges. *Id*.

¶ 58 In the present case, unlike *Gorr*, the conduct upon which two of the four charges (counts II and III) brought against plaintiff were based, namely, the destruction of police records and impeding of an internal investigation and the false and misleading statements made during the subsequent UPODA investigation, occurred *after* he was put on administrative leave and was no longer acting as chief[3]. As the charges in counts II and III were *not* directed to plaintiff's conduct and duties as chief, the jurisdiction to consider them was not vested with the appointing (corporate) authorities, but rather was vested with the Board pursuant to section 10-2.1-17. Plaintiff does not dispute the Board's finding that he was guilty of counts II and III, nor does he dispute that the Board's finding of guilty as to counts II and III were sufficient to justify his termination from his (reverted) position as lieutenant; accordingly, we affirm the Board's May 31, 2017, order removing and discharging plaintiff from his position as lieutenant for the Village of Justice.

¶ 59 The remaining charges (counts I and IV) involved conduct that plaintiff committed while still acting as chief of police, namely the actual sending of the SafeSpeed emails, lying to the Tribune reporter, and interfering with the Scardine investigation, and, arguably under *Gorr*, the Board lacked jurisdiction to consider those charges because only the corporate authorities (who had appointed him) could discipline plaintiff for his conduct while chief of police. However, as discussed earlier in this order, even if the Board lacked jurisdiction to consider counts I and IV, it possessed jurisdiction to consider counts II and III. As plaintiff makes no argument that the Board erred in finding him guilty of counts II and III, or that the finding of guilt as to those counts was insufficient to justify his termination from his reverted position as lieutenant, we affirm his termination.

[3] During this time, Deputy Chief McDermott became acting chief of police.

¶ 60 Plaintiff argues, though, that we should reverse the Board's termination decision because under a section of its own written rules and regulations entitled "sources of authority and intent," the Board may only conduct hearings "on charges brought against, full time, paid members of the Village of Justice Police Department." Plaintiff contends that he was not a full time, paid member of the police department at the time of the hearing, and therefore he argues that the Board could not consider the charges filed against him.

¶ 61 Administrative rules and regulations are construed under the same standards governing the construction of statutes. *City of St. Charles v. Illinois Labor Relations Board*, 395 Ill. App. 3d 507, 509 (2009). The primary objective in interpreting the agency's regulation is to ascertain and give effect to the agency's intent, using the language of the regulation as the best indicator thereof. *Id.* Further, to determine the plain meaning of a regulation, we must consider it in its entirety, keeping in mind the subject it addresses and the apparent intent of the agency in enacting it. *Id.*

¶ 62 Plaintiff's interpretation of the "sources of authority and intent" section of the Board's rules and regulations as requiring that he be a full time, paid member of the police department at the time of the hearing would render meaningless the provision in chapter IV, section (c) of those same rules and regulations that permits the Board to issue an unpaid suspension "while the charges are pending." See Rules and Regulations of the Board, Chapter IV, §4(c). Plaintiff's interpretation would also render meaningless section 10-2.1-17 of the Illinois Municipal Code, which also provides that the Board may suspend an officer without pay "pending the hearing." 65 ILCS 5/10-2.1-17 (West 2018). Under the rules of statutory construction, plaintiff's interpretation of the rules and regulations is impermissible. See *Perez v. Illinois Department of Children and Family Services*, 384 Ill. App. 3d 770, 774-75 (2008) and *Solon v. Midwest*

Records Ass'n, 236 Ill. 2d 433, 440-41 (2010) (we construe statutes and administrative rules and regulations so as to avoid rendering any part meaningless or superfluous).

¶ 63 Viewing the Board's rules and regulations in their entirety, the only reasonable interpretation (and the one that would avoid rendering any part of the administrative rules and Illinois Municipal Code meaningless or superfluous) is that to be subject to a disciplinary hearing before the Board, the officer must have been a full time, paid member of the police department during the time of the misconduct that serves as the basis of the charges; he need not be a full time paid member at the time of the hearing. As plaintiff was a full time, paid member of the Village of Justice Police Department at the time of the misconduct that served as the basis of the charges against him, the Board had the authority under its own rules and regulations to conduct the hearing thereon.

¶ 64 Next, plaintiff argues that we must reverse the termination order under the doctrine of *laches*, because after his "illegal" discharge as a police officer in December 2012, four years passed until the written charges were filed to remove him from his position as lieutenant and until the hearing was ultimately conducted by the Board. *Laches* is a defense that may be asserted against a party who has knowingly "slept" on his rights. *City of Chicago v. Alessia*, 348 Ill. App. 3d 218, 228-29 (2004). Plaintiff bears the burden of showing a lack of due diligence on the part of the Board, and that the delay prejudiced him. *Id.* at 229. Where, as here, plaintiff seeks to apply *laches* against a governmental entity, our courts have expressed a consistent reluctance to impose *laches* to its actions, unless plaintiff can show unusual, extraordinary, or compelling circumstances. *Id.* Mere nonaction of governmental officers is not sufficient to support a claim of *laches*. *Id.*

¶ 65 Plaintiff's *laches* argument centers on his contention that after the corporate authorities terminated him as chief of police on December 13, 2012, he reverted to his previous position of lieutenant, and that to remove him as lieutenant, written charges first should have been filed and the Board should have held a hearing within 30 days thereof pursuant to section 10-2.1-17. Instead, the corporate authorities removed him from his position of lieutenant on December 13, 2012, *before* the filing of charges and *before* any hearing was held. Charges were not filed until four years later in February 2017, after the circuit court entered its order directing that a hearing be held on written charges, and the hearing was not held by the Board until March 2017. Following the hearing, the Board terminated him from his position as lieutenant. Plaintiff argues that the four-year delay necessitates reversal of the termination order under the doctrine of *laches*.

¶ 66 We disagree. The four-year delay in filing charges with the Board and commencing the disciplinary hearing to remove plaintiff from his position as lieutenant constituted nonaction by governmental officials, and was not so unusual, extraordinary or compelling so as to invoke *laches*. See *Van Milligan v. Board of Fire and Police Commissioners*, 158 Ill. 2d 85 (1994) (five-year delay in filing disciplinary charges was not an action sufficient to invoke *laches* against a governmental body). Also, plaintiff has failed to show any prejudice by the delay, as he does not challenge the evidence presented at the hearing and does not dispute that the evidence presented was sufficient to justify his termination. See *Jager v. Illinois Liquor Control Comm'n*, 74 Ill. App. 3d 33 (1979) (because the evidence was uncontroverted, plaintiff could not show the requisite prejudice to invoke the doctrine of *laches*).

¶ 67 Plaintiff next contends that the termination order should be reversed because the Board failed to conduct a hearing within 30 days of the circuit court's order directing that a hearing be

held. In support, plaintiff cites *Bridges v. Board of Fire and Police Commissioners*, 83 Ill. App. 3d 190 (1980). In *Bridges*, Officer Edward Bridges was charged on February 10, 1977, with willfully maltreating a prisoner. *Id*. at 191. A hearing was set for less than 30 days later, on March 8, 1977, but the hearing was subsequently continued multiple times while Officer Bridges underwent a psychiatric examination pursuant to a negotiated plea agreement. *Id*. at 192. On March 30, Officer Bridges appeared before the Board, repudiated the agreement, and demanded an immediate hearing on the charges. *Id*. The Board found that Officer Bridges had forfeited his right to a hearing, and it discharged him from the police department. *Id*. Officer Bridges filed a complaint for administrative review in the circuit court. *Id*. at 193. On June 15, 1977, the court reversed his dismissal and remanded for a hearing before the Board on the February 10 charges. *Id*. The hearing was held 36 days later, after which the Board found Officer Bridges guilty of the original charges and discharged him from the police force. *Id*.

¶ 68 On appeal, the appellate court noted that section 10-2.1-17 of the Illinois Municipal Code provides that "The [Board] shall conduct a fair and impartial hearing of the charges, to be commenced within 30 days of the filing thereof, which hearing may be continued from time to time ***." *Id*. (citing 65 ILCS 5/10-2.1-17 (West 2018)). The initial hearing on the February 10 charges was timely commenced, and then continued from time to time, until the Board dismissed Officer Bridges on March 30, 1977. *Id*. at 193-94. However, the appellate court held that after the circuit court entered the order on June 15, 1977, remanding for a hearing on the original February 10 charges, the 30-day period again began to run under section 10-2.1-17, and that the Board lost jurisdiction of the case when it failed to hold a hearing within 30 days of the remand order. *Id*. Accordingly, the appellate court reversed the officer's dismissal. *Id*. at 194.

¶ 69 In the present case, unlike in *Bridges*, written charges were not filed prior to the circuit court's order directing that a hearing be held, and therefore the Board had to wait to hold the hearing until those charges were filed. The written charges were filed 12 days after the circuit court's order, and the hearing was timely held, pursuant to section 10-2.1-17, within 30 days of the filing of the charges. Accordingly, there was no jurisdictional bar to the Board conducting a hearing on the charges.

¶ 70 Finally, plaintiff argues that from December 13, 2012, when he was terminated as chief of police and reverted to lieutenant, until the Board terminated him from his position as lieutenant on May 31, 2017, section 10-2.1-4 of the Illinois Municipal Code entitled him to all benefits and emoluments of the rank of lieutenant, including salary, medical benefits and creditable service time for his pension. See 65 ILCS 5/10-2.1-4 (West 2018) (providing that when the chief of police is discharged prior to attaining eligibility to retire on pension, he shall revert to his previous position and "thereafter be entitled to all the benefits and emoluments of that rank.") Plaintiff asks us to reverse and remand to the Board with directions that it award him all benefits and emoluments duly owed him from December 13, 2012, to May 31, 2017.

¶ 71 Plaintiff fails to cite anywhere in the record where he asked the Board to award him all benefits and emoluments duly owed him from December 13, 2012, to May 31, 2017. Accordingly, plaintiff has forfeited review thereof. See Illinois Supreme Court Rule 341(h)(7) (eff. May 25, 2018); *Owens v. Department of Human Rights*, 403 Ill. App. 3d 899, 926 (2010) (issues not placed before the administrative agency will not be considered for the first time on administrative review).

¶ 72 For all the foregoing reasons, we affirm the circuit court. As a result of our disposition of this case, we need not address the other arguments on appeal.

¶ 73 Affirmed.