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Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0675-16T2

NEW JERSEY STATE POLICE,

Petitioner-Respondent,

v.

TROOPER BRANDON BRUNS,
#6777,

Respondent-Appellant.

Argued January 9, 2018 – Decided March 2, 2018

Before Judges Yannotti and Carroll.

On appeal from the State of New Jersey, New
Jersey State Police, Docket No. 2013-0392.

Patrick J. Caserta argued the cause for
appellant (Law Offices of Patrick J. Caserta,
attorney; Patrick J. Caserta, of counsel and
on the briefs; Jeffrey Zajac, on the briefs).

Rimma Razhba, Deputy Attorney General, argued
the cause for respondent (Christopher S.
Porrino, Attorney General, attorney; V. Nicole
Langfitt, Deputy Attorney General, of counsel;
Christine K. Neeman, Deputy Attorney General,
on the brief).

PER CURIAM

Brandon Bruns, a member of the New Jersey State Police (NJSP), appeals from a final decision of Colonel Joseph R. Fuentes, Superintendent of the NJSP, who found that Bruns had violated the NJSP's rules and regulations and Standard Operating Procedures (SOP), which require members to promptly report alleged misconduct by other members of the NJSP and imposed a thirty-day disciplinary suspension. We affirm.

I.

This appeal arises from the following facts. During the evening of August 2, 2013, Bruns, Trooper Victor Pereira, J.B., and F.C. were at a bar in Garfield, New Jersey.¹ Pereira, J.B., and F.C. are cousins. Sometime during the evening, Bruns observed a verbal dispute between J.B. and Pereira. Bruns later said Pereira had several drinks and appeared agitated. Bruns separated Pereira and J.B., but the argument continued. The owner of the bar asked Pereira to leave and accompanied him outside.

Later, Bruns and J.B. left the bar and went out to the parking lot, where the verbal dispute between Pereira and J.B. continued. The Garfield police were summoned, and one of the officers spoke with Pereira, but the police did not take any action. At

¹ We use initials to identify some of the persons involved in this matter, to protect their identities.

approximately 1:00 or 1:30 a.m., Bruns drove J.B. to his residence. Bruns went home and fell asleep.

A few hours later, J.B. called Bruns and told him, "I think my jaw is broken, he did it." Bruns asked who he was referring to, and J.B. replied, "I can't." Bruns went to J.B.'s residence. When he arrived, Bruns observed officers from the Lodi Police Department. The Lodi police were conducting an investigation, and J.B. was in an ambulance, which transported him to the Hackensack University Medical Center. Bruns followed the ambulance to the hospital. Bruns claimed he spoke with J.B., but they did not discuss specifics of the incident.

F.C. arrived at the hospital, and Bruns asked him what happened. F.C. told Bruns that Pereira had an altercation with J.B., and during the altercation J.B.'s jaw was fractured. J.B. underwent surgery. His mouth was wired closed and steel plates were inserted into his jaw.

Later that day, Sergeant Michael Ferroni of the NJSP called Bruns to confirm dinner plans with Bruns and J.B. During the call, Bruns told Ferroni about the incident and said it was unlikely they would be getting together for dinner. Bruns told Ferroni that Pereira and J.B. had been involved in a physical altercation, and J.B. was hospitalized with a broken jaw. Bruns later testified he

was not formally reporting the incident during this phone call, but rather speaking with Ferroni as a friend.

Ferroni contacted Sergeant Major David Dias of the NJSP on another matter and asked him if he heard that Pereira had been involved in an assault the night before. When he returned to work on August 5, 2013, Dias checked and learned there was no record of any incident involving Pereira. Dias then informed his supervisor, Lieutenant Brooklyn Smith, who did not know about the incident. Smith called Pereira's supervisor, Lt. Porfirio Ayala, and Ayala called Pereira, who told him about the incident. Smith filed a "Reportable Incident Form" with the Troop "B" Headquarters.

The NJSP immediately opened an internal investigation, which concluded on December 19, 2013. On July 9, 2014, the NJSP served a charge upon Bruns, alleging by failing to report Pereira's purported off-duty misconduct, Bruns violated Article V, § 8 of the NJSP rules and regulations (the NJSP rule), which states:

A member shall communicate promptly through the Division chain of command all crimes, breaches of the peace, suicides, attempted suicides, fires, accidents, complaints, misconduct, or other information of which the Division takes cognizance, that may come to the member's attention, during the performance of such member's duty. A member shall not withhold any information on such matters for any reason.

In addition, the charge noted that the NJSP SOP B10, § IV, ¶ A (the SOP) states that, "Reportable incidents include but are not limited to the following: A complaint that a member has engaged in any form of misconduct whether on or off-duty."

Bruns denied the charge and the matter was referred to the Office of Administrative Law for an evidentiary hearing before an Administrative Law Judge (ALJ). On June 29, 2016, the ALJ issued an initial decision, which found that Bruns violated the NJSP rules and regulations and the SOP by failing to immediately report Pereira's alleged misconduct.

The ALJ rejected Bruns's contention that he had no obligation to report the incident under the NJSP rule because he was off-duty at the time. The ALJ found that the NJSP rule required members to report another member's misconduct when such misconduct comes to their attention while off-duty. The ALJ noted that it made no sense to interpret the NJSP rule "to mean that if a [T]rooper obtained information or witnessed a crime, but happened to be 'off-duty' he would not be obligated to report it."

The ALJ recommended that the Superintendent suspend Bruns for thirty days. The ALJ noted that this was Bruns's third disciplinary infraction. In 2007, Bruns had received a written reprimand; and in 2012, Bruns had been suspended for ninety days, but the suspension was held in abeyance.

Bruns filed exceptions to the ALJ's initial decision. The Superintendent issued a final decision on September 23, 2016. The Superintendent adopted the ALJ's initial decision and recommended penalty. The Superintendent also rejected Bruns's contention that he was not required by the NJSP rule to report Pereira's alleged misconduct. In addition, the Superintendent found no merit in Bruns's assertion that he did not have sufficient personal knowledge of Pereira's misconduct to report the incident. The Superintendent also rejected Bruns's contention that a report was not necessary because the Lodi police would inform the NJSP of the incident and Bruns's assertion that he did not report the matter to the NJSP because he did not want to interfere with the local police investigation. This appeal followed.

II.

On appeal, Bruns argues that (1) the ALJ and Superintendent erred by finding that he was required to report Pereira's alleged misconduct; (2) the ALJ and Superintendent erred by finding that the NJSP rule required him to report significant events that may come to the member's attention during the member's off-duty hours; (3) the charge rests on a standard that is impermissibly vague and fails to provide notice of the prohibited conduct; and (4) to the extent the ALJ or Superintendent relied upon Article IV, § 3(b)

or SOP B10, § VIII, ¶ A, any such reliance constitutes reversible error.

Initially, we note that the scope of our review of a final decision of a State administrative agency is limited. In re Herrmann, 192 N.J. 19, 27 (2007). An administrative agency's final decision will be upheld "unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." J.B. v. N.J. State Parole Bd., 229 N.J. 21, 43 (2017) (citing In re Herrmann, 192 N.J. at 27–28).

Therefore, the court's role in reviewing an agency decision is limited to three inquiries:

- (1) whether the agency's action violates express or implied legislative policies;
- (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and
- (3) whether, in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made upon a showing of the relevant factors.

[R & R Mktg. v. Brown-Forman, 158 N.J. 170, 175 (1999) (citing Pub. Serv. Elec. & Gas Co. v. N.J. Dep't of Env'tl. Prot., 101 N.J. 95, 103 (1985)).]

When we review an agency's decision, we must give "substantial deference to the agency's expertise and superior knowledge of a particular field." In re Herrmann, 192 N.J. at 28.

III.

We turn first to Bruns's contention that the ALJ and Superintendent erred by finding that he had a duty to report Pereira's misconduct. Bruns argues that the record does not show that he had sufficient knowledge of the incident to report the matter through the NJSP's chain of command. He contends J.B. never informed him that Pereira caused his injury and that Pereira was the aggressor who instigated the altercation.

We are convinced, however, that the record supports the Superintendent's determination that Bruns had sufficient personal knowledge about the incident to report the matter through the NJSP chain of command. As noted, Bruns testified that he witnessed a verbal altercation between Pereira and J.B. at the bar. Bruns said he had to separate the two men, and Pereira was asked to leave the bar.

Thereafter, Pereira and J.B. continued their verbal dispute outside of the bar, and police officers were called to the scene. Only hours later, J.B. called Bruns. He told him that his jaw was broken and that "he did it." Furthermore, at the hospital, F.C. told Bruns that Pereira and J.B. had another physical altercation, during which J.B.'s jaw was broken.

On appeal, Bruns contends that this information was insufficient to show that Pereira had engaged in misconduct, and

that it would have been wrong for him to "jump to [that] conclusion." We disagree.

As the ALJ and Superintendent found, the NJSP rule and the SOP require members of the NJSP to promptly report all crimes, breaches of the peace, misconduct, fires, and other such significant events "that may come to [such] members' attention." In addition, the SOP provides that reportable incidents include "[a] complaint that a member [of the NJSP] has engaged in misconduct whether on or off-duty." Bruns had more than sufficient information to report Pereira's misconduct through the NJSP chain of command. Moreover, the NJSP rule and the SOP do not support Bruns's contention that "personal or direct knowledge" of misconduct is required.

Bruns also contends he did not have personal knowledge as to whether Pereira was the aggressor or whether he may have acted in self-defense. The Superintendent noted, however, that Bruns has only offered speculation regarding the circumstances of Pereira's misconduct, and Bruns had suggested that Pereira's action "may have been justified."

The Superintendent concluded that such speculation did not relieve Bruns of his affirmative obligation to report Pereira's misconduct through the chain of command. The Superintendent also noted that there was no basis for Bruns's assertion that he did

not need to report Pereira's misconduct because the Lodi police would report the incident to the NJSP, and Bruns did not want to interfere with the investigation. The record supports those findings.

IV.

Next, Bruns argues that the ALJ and Superintendent misinterpreted the NJSP rule as requiring members of the NJSP to report crimes, breaches of the peace, fires, misconduct, and other such significant events that may come to the members' attention during their off-duty hours. Bruns contends the NJSP rules and regulations only require members to report when such events come to the members' attention during their on-duty hours.

The NJSP rule does not, however, limit a member's duty to report such events that may come to his or her attention during the member's on-duty hours. As noted, the rule states that the member has a duty to report the specified information that comes to his or her attention "during the performance of such member's duty." (Emphasis added). The ALJ and Superintendent reasonably found that the phrase "such member's duty" is not limited to the member's on-duty working hours.

It is well established that police officers are "a special kind of public employee." Moorestown Twp. v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965). As such, they are held to a

higher standard of conduct than persons in most other occupations. In re Phillips, 117 N.J. 567, 576-77 (1990). Indeed, a police officer "represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public." Armstrong, 89 N.J. at 566. This higher standard of care is "implicit in all departmental regulations" and applies to conduct both on and off-duty. In re Phillips, 117 N.J. at 577.

Here, the Superintendent reasonably found that each member of the NJSP has a duty to follow and abide by the NJSP rules and regulations and that duty does not depend upon the member's hourly work schedule. See Rogers v. Jordan, 339 N.J. Super. 581, 588 (App. Div. 2001) (finding that an off-duty officer is nonetheless still subject to duty); Connell v. Bd. of Review, 216 N.J. Super. 403, 407 (1987) (citing Atlantic City Police Req. 3:1-6) (finding that police officers, although periodically relieved of routine duties, are always subject to duty); Rivell v. Civil Serv. Com., 115 N.J. Super. 64, 70 (App. Div. 1971) (finding that a police officer, whether off-duty, on a leave of absence, or suspended, remains subject to the department's applicable rules and regulations).

Thus, in this case, the ALJ and the Superintendent reasonably found that the NJSP rule requires a member to report crimes,

breaches of the peace, fires, misconduct, and other such significant matters including those that come to the member's attention during off-duty hours. As the ALJ noted, it would make no sense to interpret the rule so that a member of the NJSP would have no duty to report a crime, breach of the peace, fires, misconduct, or other such significant event merely because information about the event came to the member's attention during his or her "off-duty" hours.

Furthermore, as the ALJ noted in his decision, Bruns did not indicate in his initial statement to Ferroni or at the hearing that he believed he did not have a duty to report Pereira's misconduct because that information came to his attention while he was off-duty. Rather, Bruns claimed he had no duty to report the incident because he did not have sufficient personal knowledge of the alleged assault.

We therefore conclude that the record supports the Superintendent's determination that the NJSP rule and the SOP require a member to report crimes, breaches of the peace, fires, misconduct, and other such significant events through the NJSP's chain of command if knowledge of such matters comes to the member's attention "during the performance of such member's duty," which includes the member's off-duty hours.

V.

Bruns also argues that the charge against him was based on a standard that is impermissibly vague and fails to provide members of the NJSP notice of the prohibited conduct. He contends there is an inconsistency between the NJSP rule, which requires a member to report matters that come to his or her attention "during the performance of such member's duty" and the SOP, which states that a member must report "[a] complaint that a member has engaged in any form of misconduct whether on or off-duty." Bruns also contends the term "misconduct" is undefined and fails to provide adequate notice of the matters that should be reported. We find no merit in these contentions.

There is no inconsistency between the NJSP rule and the SOP. The SOP states that reportable events include the alleged misconduct by a member of the NJSP, regardless of whether such misconduct was committed on or off-duty. The NJSP rule requires a member to report misconduct, when it comes to a member's attention "during the performance of such member's duty." As stated previously, the Superintendent reasonably determined that the term "duty" in the NJSP rule encompasses a member's on- and off-duty hours.

Moreover, the term "misconduct" is not impermissibly vague. The word "misconduct" has been defined as unlawful, bad or

dishonest conduct, or willfully improper behavior. Webster's New World College Dictionary, 866 3d. Ed. 1997. There is nothing vague about these concepts. In addition, the misconduct at issue here, specifically an alleged aggravated assault, clearly comes within the ambit of the reporting obligation under the NJSP rule and the SOP.

Furthermore, at the hearing Bruns testified that at the police academy, he was provided with a copy of the NJSP rules and regulations, which elaborate and explain the concept of "misconduct." Bruns also conceded that as a member of the NJSP, he is required to possess and understand the NJSP's rules and regulations at all times.

Therefore, the NJSP rule and the SOP provide members of the NJSP with reasonable notice of the members' reporting obligation, specifically with regard to misconduct and complaints that another member committed misconduct. The NJSP rule and the SOP provided Bruns with adequate notice of his duty to report Pereira's alleged misconduct and the potential for disciplinary action if he failed to comply.

VI.

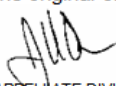
Bruns also contends that in its post-hearing brief, the NJSP sought to amend the charge to include an allegation that he violated Article IV, § 3(b) and SOP B10, § VIII(a). Bruns argues

he had was not afforded an opportunity to review or rebut the proposed amendment during the hearing. He further argues that to the extent the ALJ or the Superintendent relied upon either Article IV, § 3(b) or SOP B10, § VIII(a) in their respective decisions, any such reliance represents reversible error.

This contention is without sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E). We note, however, that there is no indication in the ALJ's initial decision or the Superintendent's final decision that the NJSP's motion to amend the charge had been granted. Furthermore, as we have explained, Bruns was charged with failing to report Pereira's alleged misconduct, as required by the NJSP rule and the SOP. He was not charged with a violation of any other NJSP rule or SOP.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION