

# Styron v. Burk

Court of Appeals of Indiana

February 7, 2022, Decided

Court of Appeals Case No. 21A-PL-1521

## Reporter

2022 Ind. App. LEXIS 35 \*

Emily Styron, Mayor of the Town of Zionsville, Indiana, Appellant-Plaintiff, v. Brad Burk, Alex Choi, Joseph Culp, Josh Garrett, Craig Melton, Jason Plunkett, and Bryan Traylor, Town Council of Zionsville, Indiana, Appellees-Defendants,

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## Opinion

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[\*1] Appeal from the Boone Superior Court

The Honorable Matthew C. Kincaid, Judge

Trial Court Cause No.

06D01-2103-PL-334

and

James C. VanGorder,

*Appellee-Intervenor.*

Najam, Judge.

Statement of the Case

[1] Emily Styron, in her capacity as the Mayor of the

Town of Zionsville, appeals from the trial court's order on her Complaint for Determination of Powers against Brad Burk, Alex Choi, Joseph Culp, Josh Garrett, Craig Melton, Jason Plunkett, and Bryan Traylor, the seven members of the Zionsville Town Council. 1 Mayor Styron's complaint sought to resolve the following question: whether the Town's 2014 reorganization resolution, which provides that the Mayor cannot "discharge" the Chief of the Zionsville Fire Department without the Town Council's approval, means that-and only that-the Mayor cannot terminate the Chief's employment without the Council's approval or whether the resolution also means that the Mayor cannot redefine the Chief's duties, revise his job description, and demote the Chief to his last held merit rank

1 James C. VanGorder, the Chief of the Zionsville Fire Department and an intervenor in the trial court, has joined the Town Council's brief on appeal.

without the Council's approval. [\*2] Like the trial court, we conclude that the power proposed to be exercised by the Mayor, namely, to redefine the Chief's duties, revise his job description, and demote him would, in its operation and effect, discharge the Chief without the Council's approval. Therefore, we affirm the trial court's summary judgment.

## Facts and Procedural History

[2] Under a 2014 plan of reorganization, the Town of Zionsville ("the Town") and "all areas of Perry Township

not within the municipal limits of Whitestown or Lebanon" in Boone County adopted a resolution to consolidate, reorganize, and merge into a governmental unit to be known as the Town of Zionsville. Appellant's App. Vol. 2 p. 69. Voters in both jurisdictions approved the plan of reorganization. The plan followed a similar reorganization in 2010 in which the Town, Union Township, and Eagle Township had reorganized into the Town of Zionsville.

[3] The 2014 reorganization resolution provided that, "[t]he executive power of the reorganized town is transferred to and vested in the Mayor" and that "[t]he position of elected Mayor is a full-time occupation." *Id.* at 71-72. As relevant here, the 2014 reorganization resolution also provided that:

ZR2A8: [\*3] All rights and responsibilities assigned by Indiana law to the town executive or town council president in his or her executive capacity are transferred to and are rights and responsibilities of the Mayor. This includes the power to appoint members to and remove members from boards, utilities[,] and

commissions which were a power of the town council president prior to this reorganization.

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ZR3A12: Uncertainty or disputes arising regarding whether a function to be performed is properly held by the Mayor or by the town council may be resolved utilizing the process found in IC 36-4-4-5. *However, provisions of the 2010 reorganization control overconflicting state law, and provisions of this reorganization control over both state law and any conflicting item in the 2010 reorganization.*

ZR2A13: The Mayor shall:

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(f) Supervise subordinate officers . . . .

ZR2A14: At least once per month, the Mayor shall meet with the officers in charge of the town departments: for consultation on the affairs of the town; to adopt rules and regulations for the administration of the affairs of the town departments; and to adopt rules and regulations prescribing a merit system for selecting, appointing, or promoting [\*4] town officers and employees.

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ZR2A22: The Mayor shall appoint the head of each department of the town . . . . The Mayor shall appoint the Chief of the Fire Department, the Chief of Police, and any other officers required by statute.

ZR2A23: . . . The head of each department and its employees are under the jurisdiction of the Mayor, with the exception of the Department of Parks and Recreation . . . .

ZR2A24: *The Mayor must have the approval of a majority of the town council before the executive may discharge a department head, with the exception of the superintendent of parks and recreation . . . .*

*Id.* at 72-74 (emphases added).

[4] James C. VanGorder has served as the Town's Chief of the Fire Department since 1996. On January 1, 2020, Mayor Styron took office as the Town's mayor.

[5] On February 3, 2021, Jo Kiel, the Town's Director of Human Resources, recommended that the Town Council "reassign Chief VanGorder to a more appropriate role," that is, that the Town Council remove him from his position as Chief of the Fire Department. Specifically, Kiel's letter to the Town Council stated as follows:

As the [fire] department has grown, Chief VanGorder

has struggled to effectively lead his [\*5] team. Complaints of intimidation and bullying, unfair application of policies, lack of transparent hiring and promotional processes[,] and an increasingly toxic culture continue to be received in the Mayor's office and Human Resource office. Staff and peers speak of the poor reputation the department has earned over time[,] which impacts our ability to retain and recruit talent.

After reorganizing the department and using the two new deputy chiefs as a buffer between the Chief and the staff, there appears to

have been some improvement in the treatment of those in fire services. However, staff continue to worry about the long-term condition of the reorganization. The deputy chiefs are over-worked and their employment status is fragile. Both are at risk for resignation.

Based on dozens of interviews and my own observations, I believe that Chief VanGorder employs the method of transactional leadership, relying heavily on the manipulation of power and authority, instead of the practice of transformational leadership, which is used to win the hearts and minds of employees. Even more troubling, Chief VanGorder does not take responsibility for any leadership flaw, large or small. When questioned[,] [\*6] he is deflective and argumentative, with behavior ranging from pacifying to intimidating.

Employees have risked their careers numerous times to speak to the Mayor or Human Resources. They have participated in committees and focus groups sharing their opinions and recommendations for improvement. They are tired of trying to explain their pain. Many are in employment processes elsewhere . . . . Employees talk of the migration from 'very excited about their jobs' to 'just here to take a paycheck.' As the employer, the Town of Zionsville, as well as the Town Council,

has an obligation to provide our employees a safe environment in which to work and to be inspired. We ask our firefighters to put their lives on the line and we thank them by providing poor leadership and a disruptive environment.

Chief VanGorder is not a good fit for the Fire Chief position. He lacks the emotional intelligence to understand and execute his role as a leader. His transactional leadership style, lack of demonstrated ability to create and maintain good relationships with his staff[,] and the growing unrest in the department places the organization in chaos and detracts from the overall mission.

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*I recommend and [\*7] would like your support through a formal vote to reassign Chief VanGorder to a more appropriate role, taking advantage of his skill set, minimizing his position as a leader[,] and maintaining his merit rank of Captain. . . .*

Appellant's App. Vol. 4 pp. 132-33 (emphasis added).

[6] On February 19, Mayor Styron emailed the members of the Town Council to follow up on Kiel's letter. In her email, Mayor Styron stated:

Thank you for your time and concentrated effort and focus over the past couple of weeks, both being receptive to and actively gathering information on the issue involving Chief VanGorder and the fire department. I know that [Kiel] has appreciated the opportunity to provide you with the information she's collected and her recommendation . . . .

I hope that we all can identify that a problem exists in the culture at a management level within the fire department. I do believe that people can change and grow, if they want to; however, I'm afraid that our firefighters and our fire department cannot wait for this

growth at the management level, which may or may not ever occur. You've heard that a quitting pact exists within the fire department among the firefighters if changes are not [\*8] made. It is our responsibility as Town leaders to resolve this problem in a way that is in the best interest of all of our firefighters, before it is too late.

In order to move this issue forward toward resolution, the administration and the members of the fire department need to know where the Council stands on the matter. Therefore, *I'm requesting that you take a vote on the proposed demotion on the Fire*

*Chief to his last-held merit rank* at your March 1st meeting. March 1st gives you another week to continue any ongoing conversations you feel are necessary. . . .

Alternatively, if the Council does not want to vote and take a public position on this decision, the Council may acknowledge that I have the authority to make this decision on my own . . . . If this were to happen, the decision, and the consequences of that decision, would be solely my responsibility.

Please let me know your thoughts. As you know, this matter is very time sensitive as it has gone on far too long already. . . .

*Id.* at 36-37 (emphasis added).

[7] The next day, Councilor Garrett, the President of the Town Council, responded to Mayor Styron's email:

I have had several requests from Councilors asking for more time in [\*9] conducting interviews, review[ing] information[,] and consider[ing] all the facts. They felt a March 1st vote would be rushing what is an extremely important decision for our Chief, our Fire Department[,] and our Town. Given the full time work and personal schedules of each of us, this is not an unreasonable position. I have spoken with several fire fighters about

the issues and all have stated that their concerns are not impacting the safety of themselves, their coworkers[,] or the general public, so I am not concerned [about two] additional weeks in what has been an exhaustingly long process.

I will continue to remind you each time you make the statement that you have the right to demote the Chief that it is the personal and legal belief of this Council that you do not. Chief VanGorder is a department head . . . and will be treated as such. This

Council has spent an enormous amount of time working on this issue and has met our promise to bring this through the process. Should you choose to [i]gnore whatever outcome a vote produces and act unilaterally, it would be enormously disappointing and would certainly define how you view this Council.

*Id.* at 36.

[8] On March 15, the Town Council [\*10] held a public hearing and vote on Mayor Styron's request to remove Chief VanGorder from his position as the head of the Town's Fire Department. The minutes of that meeting show as follows:

President Josh Garrett: So, back to new business . . . . [A] chief of the Fire Department and a chief of the Police Department is by nature of those roles a department head for the Fire Department and the Police Department[,] respectively. Therefore, the removal of the chief of either department requires a majority of the Town Council to vote to give the Mayor the authority to demote a chief from his or her position. . . . Any further demotion or change of employment status including termination must abide by the merit employment statutory requirements for members of the Fire and Police Departments. Because the town's reorganization requires the Town Council to vote to give the Mayor the authority or not give her the authority to discharge a

department head, the Mayor has publicly requested and we have privately discussed the Mayor's interest in the town voting on this matter. [The] Council has met with the Mayor and her staff to discuss her interests and concerns in demoting the Chief from his position [\*11] as chief within the department. [The] Council has also met with the department head in question as well as members of his department to get a better picture of what is happening within the department. Further, the Council has met with three executive sessions to discuss this matter. This is a vote the Town Council does not take lightly and has been spending a significant amount of time researching and deliberating on this

matter. Councilors, I know we have all spent a lot of time on this subject both as a group and individually . . . . [A]re there any motions on this agenda item?

Councilor Traylor: I'll make a motion to deny the Mayor's request for discharge of the department head.

[President] Garrett: . . . [M]otion from Councilor Traylor to deny. A second from Councilor Plunkett. Heather, really quick, can you just confirm what councilors are voting on with a yay or nay decision so that they are making the decision that they want to make[?]

Heather: Yes, so, right now we have the motion to deny allowing the [M]ayor to discharge the Chief of the Fire Department who serves as the department head for the Fire Department from his position as chief. So, if you vote in favor of this motion, [\*12] you are voting to retain Chief VanGorder in his role as chief of the department.

[President] Garrett: . . . Amy, can you do a roll call vote[?]

Amy: Sure.

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Amy: . . . President Garrett?

[President] Garrett: Yes.

Amy: Vice President Plunkett?

[Vice President] Plunkett: Yes.

Amy: Councilor Burk?

[Councilor] Burk: Yes.

Amy: Councilor Choi?

[Councilor] Choi: Yes.

Amy: Councilor Melton?

[Councilor] Melton: Yes.

Amy: Councilor Traylor?

[Councilor] Traylor: Yes.

[President] Garrett: Very good. The motion to deny the request passes with a vote of seven in favor, zero opposed. . . . I think, speaking for all of us, we appreciate the time that the parties have spent on this matter, including members of the public. I noticed how seriously my fellow councilors and myself as well are taking this issue so I want to thank them for being so engaged in this process. I also want to thank the professionalism of Mayor Styron and her administration in providing updates and information and answers to us. And, certainly, I want to thank all the members of the ZFD who participated in this process. I think, during this process, it became apparent that there are some issues that need to be addressed within our Fire Department [\*13] as there are in really any type of large organization. I was certainly relieved in conversations that I had with fire fighters[ that] none of these issues were related to their own safety or safety of the public but[ ] were issues nonetheless. None of these issues seems insurmountable, which is a good thing, but they

need to be documented and I also think addressed with some urgency. I do

have, and I think speaking for this council, we do have full confidence in the Mayor, the town's HR Department, Chief VanGorder, [that] these challenges can be overcome for the betterment of the community. . . .

*Id.* at 41-42.

[9] Following the Town Council's vote, later that same day Mayor Styron presented Chief VanGorder with a new and revised job description for the Chief of the Fire Department. The job description limited the Chief's duties and responsibilities largely to advising the Mayor and her staff "on technical and administrative matters regarding assigned projects." Appellant's App. Vol. 3 p. 215. At the same time, the Mayor revised the Deputy Fire Chief's job description to include the following duties and responsibilities: "manage all day to day operations of Zionsville Fire Department, including [\*14] Fire Operations, Fire Prevention, Planning, Fleet Services, Inspectors, and Investigation"; "[s]upervise, coach, and develop employees"; "[o]versee screening, hiring, training, promotion, and disciplinary processes"; "[e]nsure the development of public safety programs and [that] they are delivered throughout the community"; "[e]stablish and manage policies for fire protection services"; "[p]repare annual budget request, administer budget, and ensure claims are submitted timely"; "[s]erve as departmental spokesperson as necessary"; and "[be r]esponsible for the development of Prevention strategies to support the overall business plan and strategic direction for the department." *Id.* at 208-09.

[10] The next day, Mayor Styron filed her Complaint for Determination of Powers against the Town Council pursuant to Indiana Code Section 36-4-4-5. In her complaint, she asserted that she "has the power to appoint the Chief of the Fire Department" and, "[a]s a

corollary to the power of appointment," she also "has the authority to demote the Chief of . . . [the] Fire Department to the position he . . . occupied prior to the appointment . . ." Appellant's App. Vol. 2 p. 21. The Town Council answered and denied that the Mayor [\*15] had any such implied "corollary" authority. *Id.* at 127. Chief VanGorder filed a motion to intervene, which the trial court granted. Chief VanGorder further moved to enjoin Mayor Styron from implementing the new job descriptions, alleging that they "effectively stripped him of his roles and responsibilities [as] a Department Head." *Id.* at 104.

[11] Thereafter, both parties moved for summary judgment, and, after a hearing, the trial court granted the Town Council's motion for summary judgment and denied Mayor Styron's motion. In its order, the court concluded:

- (1) [Mayor Styron] does not have the authority to demote a department head such as the Fire Chief . . . because the same is the equivalent of discharging a department head and[,] for [Mayor Styron] to lawfully exercise that authority, the Mayor must have the approval of a majority of the Town Council . . . ;
- (2) Action by [Mayor Styron] in the nature of supervising a department head or directing executive policy which stops short of removing core management authority from a department head is not prohibited; and
- (3) The action taken by the Mayor in the manner by which the Fire Chief's core authority has been removed, which continues [\*16] at this time, exceeds the authority of the Mayor under the 2014 Reorganization.

Appellant's App. Vol. 4 p. 156. Thus, the trial court held that the demotion of

the Fire Chief, which removed the Fire Chief's core management authority,

was equivalent to the discharge of a department head and that the Mayor

cannot take such an action without the approval of a majority of the Town

Council under the 2014 reorganization.

[12] Following that order, Mayor Styron and Chief VanGorder "conferred and reached an agreement as to a revised Fire Chief job description which restores Chief VanGorder's core functions as the sole department head of the Zionsville Fire Department." *Id.* at 159. Chief VanGorder then moved to withdraw his request for injunctive relief as moot. The court granted that request and entered final judgment. This appeal ensued.

#### Discussion and Decision

##### ***Standard of Review***

[13] Mayor Styron appeals the trial court's denial of her motion for summary judgment and the entry of summary judgment for the Town Council. Our standard of review in summary judgment appeals is well established. As our Supreme Court has made clear, "[w]e review summary judgment *de novo*, applying the same standard as the [\*17] trial court." *G&G Oil Co. v. Cont'l W. Ins. Co.*, 165 N.E.3d 82, 86 (Ind. 2021). "Indiana's distinctive summary judgment

standard imposes a heavy factual burden on the movant." *Siner v. Kindred Hosp.Ltd. P'ship*, 51 N.E.3d 1184, 1187 (Ind. 2016). We draw all reasonable inferences in favor of the nonmoving party and affirm summary judgment only "if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Id.* (quoting Ind. Trial Rule 56(C)). And we "give careful scrutiny to assure that the losing party is not improperly prevented from having its day in court." *Id.* (quoting *Tankersley v. Parkview Hosp.*,

*Inc.*, 791 N.E.2d 201, 203 (Ind. 2003)).

[14] Here, the parties filed cross-motions for summary judgment, and the trial court's order on those motions includes findings and conclusions thereon. "Parties filing cross-motions for summary judgment neither alters" our standard of review "nor changes our analysis—we consider each motion separately to determine whether the moving party is entitled to judgment as a matter of law."

*G&G Oil Co.*, 165 N.E.3d at 86 (quoting *Erie Indem. Co. v. Estate of Harris*, 99 N.E.3d 625, 629 (Ind. 2018)). Further, although the trial court's findings and conclusions "aid our review of a summary judgment ruling[,] they are not binding on this Court," and they do not alter our standard of review. *Knighten v.E. Chicago Hous. Auth.*, 45 N.E.3d 788, 791 (Ind. 2015) (quoting *City of Gary v. Ind. Bell Tel. Co.*, 732 N.E.2d 149, 152 (Ind. 2000)).

##### ***The Indiana Government Modernization Act***

[15] We first consider the Indiana [\*18] Government Modernization Act (the "Act"), the enabling legislation for the 2014 reorganization resolution. As the Indiana Supreme Court has explained:

Like many other states, Indiana historically adhered to the Dillon Rule that a municipal corporation could exercise only the following powers:

First, those granted in *express words*; second, those *necessarily or fairly implied* in, or *incident* to, the powers expressly granted; third, those *essential* to the declared objects and purposes of the corporation—not simply convenient, but indispensable.

*Tippecanoe Cnty. v. Ind. Mfr.'s Ass'n*, 784 N.E.2d 463, 465 (Ind. 2003) (citing Dillon, *Municipal Corporations* (1st ed. 1872) (emphasis in original)). A corollary rule of construction required that a court resolve any

reasonable doubt concerning the existence of a power against the corporation and enjoin the corporation from exercising it. *See id.*

Under the Dillon Rule, a person who simply found himself on the wrong side of some local action could easily challenge that action by essentially arguing that it was *ultra vires*. *See, e.g., City of S. Bend v. Chicago, S.B. & N.I. Ry. Co.*, 179 Ind. 455, 458, 101 N.E. 628, 629 (Ind. 1913) ("[T]he charter of South Bend delegated no power for the enforcement of the ordinance in

controversy . . . ."). The resulting legal landscape handcuffed municipal corporations, preventing [\*19] them from taking a wide range of governmental actions we might find commonplace today. . . .

Recognizing the disadvantages of the Dillon Rule, the Legislature abrogated it in 1971, when it passed the Indiana Powers of Cities Act. Act of April 14, 1971, P.L. 250-1971, § 1, 1971 Ind. Acts 955, 967. The Legislature expanded the applicability of this reforming principle in 1980, when it passed the Indiana Home Rule Act. Act of February 27, 1980, P.L. 211- 1980, § 1, 1980 Ind. Acts 1657, 1659-62 (codified as amended at Ind. Code §§ 36-1-3-1 to -9 (2007)). In addition to reaffirming the abrogation of the Dillon Rule, the Home Rule Act provides that in general, a unit is presumed to possess broad powers of local government, unless the Indiana Constitution or a statute expressly denies the unit that power, or expressly grants it to another entity. Ind. Code § 36-1-3-5 (2007) . . . .

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Against this ever-liberalizing landscape, the Legislature passed the Indiana Government Modernization Act. Act of March 24, 2006, P.L. 186-2006, § 4, 2006 Ind. Acts 3892, 3893 (codified as amended at Ind. Code §§ 36-1.5-1-1 to -5-8 (2007 & Supp. 2011)).

*The Act grants political subdivisions "full and complete authority" to reorganize, exercise governmental functions under a cooperative agreement, and transfer responsibilities between offices and officers.* Ind. Code § 36-1.5-1-2.

A reorganization [\*20] includes a change in the structure or administration of a political subdivision involving (1) a consolidation of two or more political subdivisions; or (2) one of multiple other "allowable actions" set out in Indiana Code § 36-1.5-4-4. Ind. Code §§ 36-1.5-2-5, -4-3. *Among those other allowable actions, a reorganizing political subdivision may transfer the functions of an office to another office; and provide for a legislative body, an executive, or a fiscal body of the reorganized political subdivision to exercise the powers of the reorganizing political subdivision's legislative body, executive, or fiscal body.* Ind. Code § 36-1.5-4-4(3)[, ](4).

*Kole v. Faultless*, 963 N.E.2d 493, 495-96 (Ind. 2012) (emphases added). Thus, the Act is the legal authorization and predicate for the 2014 reorganization resolution, which created the office of the Mayor and established her authority.

#### ***To Demote the Fire Chief***

#### ***Is to Discharge a Department Head***

[16] With that background, the question presented is one of statutory interpretation, which requires that we determine the meaning of the following provision in the 2014 reorganization resolution: "The Mayor must have the approval of a majority of the town council before the executive may discharge a department head . . . ." Appellant's App. Vol. 2 p. 74. As our Supreme Court has explained: [\*21]

"Our first task when interpreting a statute is to give its words their plain meaning and consider the structure of

the statute as a whole." *ESPN, Inc. v. University of Notre Dame Police Dept.*, 62 N.E.3d 1192, 1195 (Ind. 2016) (citation omitted). In doing so, "[w]e avoid interpretations that depend on selective reading of individual words that lead to irrational and disharmonizing results." *Id.* (quotation omitted). We consider what the statute says and what it doesn't. *Id.* (citation omitted). "We do not presume that [the legislative body] intended language used in a statute to be applied illogically or to bring about an unjust or absurd result." *Id.* at 1196 (quoting *Anderson v. Gaudin*, 42 N.E.3d 82, 85 (Ind. 2015)).

*Temme v. State*, 169 N.E.3d. 857, 863 (Ind. 2021) (second alteration added).

[17] Mayor Styron asserts that the term "discharge" as used in the 2014 reorganization resolution means only the termination of employment, an interpretation that would permit her to demote the Chief of the Fire

Department to his last held merit rank so long as he remains a Town employee. The Town Council counters that, as used in the resolution, the term "discharge" not only prohibits the Mayor's unilateral termination of a department head's employment but also prohibits the Mayor from redefining a department head's duties and revising his job description to such an extent that the revised [\*22] job description deprives the department head of his core management authority. We agree with the trial court and the Town Council.

[18] To discharge an employee can mean, but does not only mean, to dismiss an employee from employment. The discharge of an employee includes, but is not limited to, "[t]he firing of an employee." *Discharge*, Black's Law Dictionary (11th ed. 2019); *see also Discharge*, Merriam-Webster.com Dictionary, <https://www.merriam-webster.com/dictionary/discharge> (defining "discharge" in part as "to dismiss from

employment") (last accessed on Jan. 31, 2022). But, as those dictionary definitions make clear, the term "discharge" includes "[a]ny method by which a legal duty is extinguished," *Discharge*, Black's Law Dictionary (11th ed. 2019), or "to release from an obligation," *Discharge*, Merriam-Webster.com Dictionary, <https://www.merriam-webster.com/dictionary/discharge> (last accessed on Jan. 31, 2022). We conclude that, here, "discharge" means a material change of employment status. The Zionsville Director of Human Resources described such a change in her letter to the Fire Chief when she wrote, "though your appointment as Fire Chief remains in effect, your roles and [\*23] responsibilities have changed." Appellant's App. Vol. 2 p. 114.

[19] The intent behind the language of the 2014 reorganization resolution is clear: the Town Council's approval is required in order for the Mayor to "release" a department head "from [the] obligation[s]" of that position. The 2014 reorganization resolution created the office of the Mayor and established that "the Mayor shall be treated in the same manner as the Mayor of a second-class city under Indiana law." *Id.* at 72. And the resolution provides that, in the same manner as with the mayor of a second-class city, the Town's Mayor shall supervise Town employees, appoint department heads, and meet regularly with department heads. *Id.* at 72-74; *see also* I.C. §§ 36-4-5-3(6), -4, and -6 (2021).

[20] However, the 2014 reorganization resolution differs in at least one significant respect from the Indiana Code provisions describing the authority of mayors of second-class cities. While the Indiana Code is silent on the authority of a mayor of a second-class city to remove an officer, the 2014 reorganization resolution is explicit: to discharge a department head, the Mayor must have the approval of the Town Council. As our Supreme Court recognized in *Kole* [\*24], the Act grants political subdivisions "full and complete authority" to "transfer

responsibilities between offices and officers." 963 N.E.2d at 496; *see also* I.C. § 36-1.5-4-4 (the reorganized political subdivision may transfer the functions of an office to another office). But that authority is granted to the political subdivision, not unilaterally to the Mayor.

[21] The 2014 reorganization sought to combine the benefits of town governance with the benefits of a full-time, elected mayor. Thus, the reorganization resolution generally established the Mayor's authority to be like that of a mayor

of a second-class city. However, the resolution includes a provision that, under the 2014 reorganization, restricts the Mayor's authority to discharge a department head. And that restriction speaks broadly to the "discharge" of a department head, not narrowly to the "termination" of a department head. Appellant's App. Vol. 2 p. 74. In interpreting a statute, we consider not only what it says but also what it does not say. *Temme*, 169 N.E.3d at 863. Here, the resolution, which operates like a statute or ordinance, uses the comprehensive term "discharge," not the narrow term "termination." Neither does the resolution use the term "dismissal," which is [\*25] the statutory term used when a safety board terminates the member of a fire department from employment. *See*

I.C. § 36-8-3-4.

[22] The Mayor's narrow interpretation of the term "discharge" would lead to a result inconsistent with the allocation of municipal power as provided within the 2014 reorganization resolution. Specifically, Mayor Styron's interpretation would allow her to avoid the prohibition against a unilateral "discharge" by simply demoting and reassigning a department head without terminating his employment. Under the resolution, the Mayor's proposed power to redefine the Fire Chief's

duties and revise his job description so as to strip him of his core management authority and assign that authority to the Deputy Fire Chief is prohibited.

[23] Still, Mayor Styron asserts that our case law supports her contention that, because she appoints a department head, she has a "corollary" power to remove that department head. In particular, Mayor Styron relies on our Supreme

Court's 1948 opinion in *State v. Reichert*, 226 Ind. 358, 80 N.E.2d 289 (1948), and its progeny. In *Reichert*, our Supreme Court stated that the Indiana Code provided the mayor of a second-class city with "the right to remove the chief of police appointed by [the mayor]." 80 N.E.2d at 291 (citing § 48-1502, Burns' 1933 [\*26] and § 48-1222, Burns' 1947 Pkt. Supp.). After *Reichert*, we held that, where a mayor "has the power to appoint a Chief of the police department" by statute, the mayor, "[a]s a corollary, . . . has the power to replace the Police Chief."

*State ex rel. Warzyniak v. Grenchik*, 177 Ind. App. 393, 400-01, 379 N.E.2d 997, 1002 (Ind. Ct. App. 1978) (citing Ind. Code § 18-2-1-5 (1971)).

[24] According to Mayor Styron, *Reichert* and *Warzyniak* establish that her power to appoint the Chief of the Fire Department comes with an implied, corollary power to demote an appointed Chief. But Mayor Styron's reliance on *Reichert* and *Warzyniak* is misplaced. Those cases are based on statutes that do not apply here. Neither *Reichert* nor *Warzyniak* involved the allocation of power between a legislative body and an executive within a reorganized municipality as authorized by the Act.

[25] As our Supreme Court explained in *Kole*, the Act sought to allow political subdivisions to make reorganization decisions they deemed most appropriate. Those decisions include allowing "a reorganizing political subdivision [to] transfer the functions of an

office to another office" and, as pertinent here, allowing "a legislative body, an executive, or a fiscal body of the reorganized political subdivision to exercise the powers of the reorganizing political

subdivision's legislative body, executive, [\*27] or fiscal body." *Kole*, 963 N.E.2d at

496 (citing I.C. § 36-1.5-4-4(3), (4)). Nevertheless, the Mayor contends that the only issue on appeal is whether the Mayor has authority to demote the Fire Chief from his upper-level appointed position to his last held merit rank without the approval of the Town Council and that she has that authority under provision ZR2A6 of the reorganization resolution. Provision ZR2A6 states broadly that, "for personnel, employment and liability purposes, the Mayor shall be treated in the same manner as the Mayor of a second-class city under Indiana law."

[26] But that general provision neither ends our inquiry nor resolves the issue whether, under the 2014 reorganization resolution, the Mayor can unilaterally demote the Fire Chief. The Act "contains full and complete authority" for the "[t]ransfer of responsibilities between offices and officers," I.C. § 36-1.5-1-2. Thus, even if the mayor of a second-class city has the implied power to unilaterally demote the Chief of the Fire Department, provision ZR2A24 of the reorganization resolution expressly restricts that power and provides that the Mayor and the Town Council share that authority. *See* Appellant's App. Vol. 2 p. 74. 2 Further, provision ZR2A12 of the resolution [\*28] provides that, in the event of "[u]ncertainty or disputes regarding whether a function is properly held by the Mayor or the Town Council," provisions of the reorganization resolution

2 In her reply brief, the Mayor contends for the first time that the authorization under ZR2A6 and the

restriction under ZRA24 are not inconsistent and can be harmonized by drawing "a distinction between the Chiefs of the Fire and Police Departments and other department heads" and by defining "discharge" as termination. Reply Br. p. 11. A party cannot raise a new argument in its reply brief. *See, e.g., Town of Zionsville v. Town of Whitestown*, 49 N.E.3d 91, 100 (Ind. 2016). The Mayor has waived this argument.

"control over" conflicting state law. *Id.* at 73. This provision in the resolution is pursuant to a corresponding section in the Act, which provides that, "to the extent the provisions of this article are inconsistent with the provisions of any other general, special, or local law, the provisions of this article are controlling." I.C. § 36-1.5-1-6. The Act also provides that, "[t]his article shall be liberally construed to effect the purposes of this article." I.C. § 36-1.5-1-5.

[27] Finally, Mayor Styron contends that the Indiana Constitution authorizes her to demote a department head whom she has appointed. [\*29] Appellant's Br. p 24. The Mayor relies on Article 15, Section 2, which states that, "[w]hen the duration of any office is not provided for by this Constitution, it may be declared by law; and, if not so declared, such office shall be held during the pleasure of the authority making the appointment. . ." The Mayor asserts that under this constitutional provision "she has the power to unilaterally demote the Fire Chief." Appellant's Br. pp. 24-25.

[28] We cannot agree. Article 15, Section 2 is inapplicable according to its own terms. The 2014 reorganization resolution, adopted under the Act, provides that "[t]he Mayor shall appoint the head of each department" and, specifically, that "the Mayor shall appoint the Chief of the Fire Department." Appellant's App. Vol. 2 p. 74. But, again, the resolution also restricts the Mayor's authority to remove a department head. As

such, the "duration" or term in office of a department head, including the Fire Chief, is "declared by law." Thus, the constitutional default provision that, "if not so declared, such office shall be

held during the pleasure of the authority making the appointment" is

inapposite.

[29] In addition to Article 15, Section 2 cited by the Mayor, Article 15, Section 1 of the Indiana Constitution provides that, "[a]ll officers, whose appointment [\*30] is not otherwise provided for in this Constitution, shall be chosen in such manner as now is, or hereafter may be, prescribed by law." Section 1 and Section 2 complement each other. In this case, under Section 1, the General Assembly has "prescribed by law" under the Act that political subdivisions may reorganize themselves and choose the manner in which officers are appointed and removed from office. Thus, under both Article 15, Section 1 and Article 15, Section 2 of the Indiana Constitution, we conclude that the 2014 reorganizing resolution has "prescribed by law" and "declared by law" a restriction on the Mayor's authority either to unilaterally demote the Fire Chief or to effectively remove the Fire Chief by stripping him of his core management authority. The Mayor cannot circumvent that restriction and accomplish indirectly what she is prohibited from accomplishing directly. *See, e.g., Goodman v. State*, 611 N.E.2d 679, 683 (Ind. Ct. App. 1993) ("the State cannot accomplish indirectly what it cannot accomplish directly"), *trans. denied*.

## Conclusion

[30] However the power proposed to be exercised by the Mayor may be characterized, whether "to reassign" the Fire Chief, "minimizing his position as a leader," as recommended by the Town's Director of Human Resources, to

"demote" him, "remove" him, "redefine" his duties, or "revise" his job [\*31]

description, the power proposed to be exercised by the Mayor would materially change the Fire Chief's status as a department head and, thus, would discharge him from his office without the approval of the Town Council, contrary to the express terms of the 2014 reorganization resolution. The trial court properly entered summary judgment for the Town Council and properly denied Mayor Styron's motion for summary judgment. The 2014 reorganization resolution "prescribed by law" and "declared by law" that the Mayor shall appoint but cannot discharge the Chief of the Fire Department without the approval of the Town Council, and that restriction includes any action the Mayor might take which, in its operation and effect, precludes the Chief of the Fire Department from exercising his core management authority as the Fire Chief. We therefore affirm the trial court's judgment.

[31] Affirmed.

Vaidik, J., and Weissmann, J., concur.

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