

P.E.R.C. NO. 2011-16

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY INSTITUTE OF TECHNOLOGY,

Respondent,

-and-

Docket No. DA-2010-002

FOP LODGE #93,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission denies the appeal of FOP Lodge #93 from the decision of the Director of Arbitration dismissing its request for appointment of an arbitrator from the Special Disciplinary Arbitration Panel. The Commission holds that the FOP's request was untimely as it was filed outside the 20-day limitations period set forth in N.J.S.A. 40A:14-210(b).

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, Holly G. Stern, General Counsel

For the Petitioner, Fusco & Macaluso, LLC (Anthony J. Fusco, Jr., of counsel)

DECISION

FOP Lodge #93 appeals from the January 20, 2010 decision of the Director of Arbitration dismissing its request for appointment of an arbitrator from the Special Disciplinary Arbitration Panel. In P.E.R.C. No. 2010-48, 35 NJPER 474 (¶158 2009), we gave the FOP ten days from the date of our decision to submit the appropriate request for appointment of an arbitrator.^{1/} Our decision was issued December 17, 2009 and was

^{1/} In that decision, we granted NJIT's request for a restraint of binding arbitration of a grievance filed by FOP Lodge 93. The grievance challenged the termination of a police officer. Police officers may not submit terminations to regular grievance arbitration. However, we also held that NJIT is covered by the police disciplinary arbitration statute, N.J.S.A. 40A:14-210(1), but the FOP did not submit the appropriate petition to receive an arbitrator from our special disciplinary arbitration panel. We gave the FOP ten
(continued...)

received by the parties December 18. The FOP's request was due on December 28, but filed on December 31. N.J.A.C. 19:10-2.1(d) (filings must be received by the Commission before 5:00 P.M on the last day of the time limit for filing). We deny reconsideration and affirm the Director's decision dismissing DA-2010-002.

The cover letter to the FOP's request was dated December 28, 2009, but the request was received on December 31. On January 4, 2010, the New Jersey Institute of Technology objected to the Director's processing of the FOP's request as untimely. The Director received briefs from the parties on the timeliness issue and dismissed the petition in a letter dated January 20. On January 21, the FOP requested that the Director reconsider his decision. On January 26, the Director denied reconsideration. This appeal ensued.

The FOP requests that we reverse the decision of the Director and find the December 31, 2009 filing to be timely because our decision in P.E.R.C. No. 2010-48 was received by its counsel on December 18 and the attorney who prepared the request on December 28 left the employ of the firm unexpectedly and did

1/ (...continued)
days to file the appropriate petition and then the parties' could argue to the Director whether the petition was timely.

not provide instructions to his secretary on the method of delivery resulting in delivery by regular mail.

Our decision explicitly provided that the FOP had ten days to file the appropriate petition to request the appointment of an arbitrator from our special disciplinary panel. Our decision also provided NJIT with the opportunity to argue to the Director that the request was untimely because it was filed more than 20 days from service of the Notice of Termination. N.J.S.A. 40A:14-210(b) requires the request be filed within 20 days of receiving the notice of termination. We are not persuaded to relax our rules in this case where we already provided an opportunity to the FOP to file its submission beyond the 20-day statutory period and it failed to do so. State of New Jersey (Office of Administrative Law, D.U.P. No. 88-4, 13 NJPER 767 (¶18292 1987), aff'd P.E.R.C. No. 88-65, 14 NJPER 127 (¶19048 1988) (unfair practice charge received one day outside statute of limitations period dismissed as untimely). Having found that the FOP did not comply with our Order, we do not reach the question of whether we could relax the statutory 20-day filing deadline.

ORDER

FOP Lodge #93's appeal of the Director of Arbitration's decision dismissing DA-2010-002 is denied.

BY ORDER OF THE COMMISSION

Commissioners Colligan, Eaton, Fuller, Krengel, Voos and Watkins voted in favor of this decision. None opposed.

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ISSUED: August 12, 2010

Trenton, New Jersey