

P.E.R.C. NO. 2011-67

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HUNTERDON COUNTY SHERIFF'S
OFFICE,

Petitioner,

-and-

Docket No. IA-2009-103

FOP LODGE NO. 94,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Hunterdon County Sheriff's motion for reconsideration of a decision issued by the Commission Chair dismissing an appeal of an interest arbitration award involving the Sheriff's Office and FOP Lodge No. 94. The Commission finds that extraordinary circumstances exist to reconsider the decision when the County presented evidence that it received erroneous advice from Commission staff regarding the appeal deadline.

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 Petitioner, Gaetano M. DeSapio, of counsel

For the Respondent, Mets Schiro & McGovern, LLP (James
M. Mets, of counsel)

DECISION

This case comes to us by way of a motion for reconsideration filed by the Hunterdon County Sheriff's Office of a decision issued by the Chair dismissing its appeal of an interest arbitration award. On February 3, 2011, an interest arbitration award pertaining to the County and FOP Lodge No 94 was issued. On February 17, the County filed an appeal of the award. A briefing schedule was issued on February 24. On February 25, the parties were notified that the February 24 briefing schedule was issued in error. The parties were further notified that pursuant to the recently enacted interest arbitration law^{1/}, the County

^{1/} See P.L. 2010, c. 105, codified at N.J.S.A. 34:13A-16, 16.7,
(continued...)

was required to file its appeal within seven days of receiving the award, and therefore, its appeal was being dismissed as untimely.

On March 4, 2011, the County filed its motion for reconsideration asking us to reinstate its appeal. Included with that motion is a certification from a legal assistant employed by the County's attorney which sets forth that on February 10, he received telephonic advice from a Commission staff member that the County's appeal was due on February 17.^{2/3/} On March 17, FOP filed opposition to the County's motion for reconsideration to reinstate its appeal. FOP asserts that there is no mechanism or rule by which the County can seek reconsideration of the Chair decision dismissing its appeal as untimely.

1/ (...continued)
16.8 and 16.9. The law became effective January 1, 2011.

2/ We confirmed that erroneous advice was given by the staff member.

3/ The County also asserts that N.J.A.C. 19:16-8.1 sets forth that a party has 14 days to file an appeal, which is inconsistent with the 7-day deadline set forth in the recently enacted interest arbitration law. In response to the new law, we suspended N.J.A.C. 19:16-8.1 and several other rules at a special meeting conducted on December 22, 2010. The minutes from that meeting can be found on the Commission website. Moreover, FAQs on the new law can be found on the Commission website which also contain information regarding which rules have been suspended as a result of the new law. We will be engaging in formal rule making to achieve consistency between our rules and the new law.

Administrative agencies have the inherent power to reopen previously issued decisions, provided the power is exercised reasonably and the application seeking its exercise is made within a reasonable time period. E.g. Ruvoldt v Nolan, 63 N.J. 171 (1973). We acknowledge the strict time frames to file an appeal of an interest arbitration award set forth by the recently enacted interest arbitration law. However, on an equitable basis, we must reconsider the prior dismissal of the County's appeal due to the unusual circumstances that the County received erroneous advice from a Commission staff member that its appeal was not due until February 17th.^{4/} The County filed its motion for reconsideration certifying that it received erroneous advice within seven days of the dismissal of its appeal. It did not delay in seeking to reinstate its appeal. Given these findings, the County has seven days from the date of this decision to file

^{4/} The cases cited by the FOP in support of its position that the Commission should not reconsider the Chair's dismissal of the County's appeal are factually distinguishable from the facts herein. In Borough of Surf City, P.E.R.C. No. 2004-80, 30 NJPER 214 (¶81 2004), we denied the Borough's motion to file a late appeal of an interest arbitration award where it asserted that it was unaware of the deadline and believed it had a longer period to file an appeal. In Borough of Cliffside Park, P.E.R.C. No. 98-71, 24 NJPER 15 (¶29010 1997), the Borough filed a motion to appeal nunc pro tunc from an interest arbitration award. Finding that the Borough had not set forth any particularized reason for the delay, we denied its motion. Neither Surf City nor Cliffside Park involved unusual circumstances like those herein where a party was given erroneous advice by a Commission staff member.

its appeal brief and appendix. N.J.S.A. 34:13A-16f(5)(a). The FOP has 7 days to file its answering brief and appendix and any cross-appeal.

ORDER

The County's motion for reconsideration to reinstate its appeal is granted. The County has seven days from the date of this decision to file its appeal. The FOP has seven days to file its answering brief or a cross-appeal.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Colligan, Eaton, Krengel and Voos voted in favor of this decision. None opposed. Commissioner Eskilson recused himself.

ISSUED: March 31, 2011

Trenton, New Jersey