

P.E.R.C. NO. 99-81

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF DUMONT,

Petitioner,

-and-

Docket No. SN-98-15

PATROLMAN'S BENEVOLENT ASSOCIATION  
(PBA) LOCAL 83 (DUMONT UNIT),

Respondent.

SYNOPSIS

The Public Employment Relations Commission dismisses as untimely a motion for reconsideration filed by the Borough of Dumont. The Borough seeks reconsideration of P.E.R.C. No. 98-111, issued on February 27, 1998, denying a restraint of arbitration of a grievance filed by Patrolman's Benevolent Association (PBA) Local 83 (Dumont Unit). The Borough seeks reconsideration based on the Commission's holding in a recent decision. The Commission concludes that all the relevant legislation and case law was available to the Borough for it to argue in the initial proceeding. Under the circumstances, and noting that motions for reconsideration must be filed within 15 days of service of the Commission's decision, the Commission finds no basis for relaxing the timelines and granting reconsideration.

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, Ruderman & Glickman, attorneys  
(Mark S. Ruderman, on the motion)

For the Respondent, Loccke & Correia, attorneys  
(Joseph Licata, on the motion)

DECISION

On February 8, 1999, the Borough of Dumont moved for reconsideration of P.E.R.C. No. 98-111, 24 NJPER 168 (¶29083 1998). In that decision, we declined to restrain binding arbitration of a grievance filed by Patrolman's Benevolent Association (PBA) Local 83 (Dumont Unit). The grievance asserted that the Borough violated the parties' contract when it disciplined Sergeant Joseph Faulborn by reassigning him from the detective bureau to a patrol position and by reducing his compensation.

In that proceeding, the Borough conceded that the reassignment would be legally arbitrable if it was disciplinary. The PBA then submitted a certification indicating that the

reassignment was disciplinary. The Borough did not submit a timely reply. Given the arguments and facts presented, we declined to restrain arbitration over the reassignment and the reduction in compensation. The Borough did not appeal.

The parties have completed their case before the arbitrator and await an award. The Borough now files this motion for reconsideration.

The Borough argues that our recent decision in Borough of New Milford, P.E.R.C. No. 99-43, 25 NJPER 8 (130002 1998), which held that the reassignment of a detective was not legally arbitrable even if the reassignment was disciplinary, creates extraordinary circumstances warranting relaxation of our rule requiring motions for reconsideration to be filed within 15 days. See N.J.S.A. 19:13-3.11 and 19:14-8.4.

The PBA responds that the motion is time-barred. It contends that nothing prevented the employer from making the negotiability arguments that the employer in New Milford made in support of its scope of negotiations petition. The PBA further contends that we should dismiss the matter based on the doctrines of laches, waiver, estoppel and res judicata.

Motions for reconsideration must be filed within 15 days of service of a Commission decision. Timelines may be relaxed where it is manifest that strict adherence will work surprise or injustice or interfere with the proper effectuation of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

N.J.A.C. 19:10-3.1(b). Under all the circumstances, we find the motion untimely.

As enacted in 1982 and as construed in State Troopers Fraternal Ass'n v. State, 134 N.J. 393 (1993), the discipline amendment to N.J.S.A. 34:13-5.3 did not apply to any disciplinary disputes involving police officers. A 1996 amendment to section 5.3 authorizes agreements to arbitrate minor disciplinary disputes. In New Milford, however, we held that the authorization does not extend to reassignments of police officers.


Rather than seek a restraint of arbitration on the ground that State Troopers and the 1996 amendment barred arbitration of this disciplinary reassignment, the Borough conceded that if the reassignment was disciplinary, it could be contested through binding arbitration. Based on the Borough's concession and a record indicating that Faulborn's reassignment was disciplinary, we declined to restrain arbitration. The Board did not file a timely motion for reconsideration nor did it appeal our decision. The parties then proceeded to arbitration and have filed post-hearing briefs, thus having invested significant time and monies in the arbitration process. All the relevant legislation and Supreme Court case law was available to the Borough for it to argue in the initial proceeding that disciplinary reassignments of

police officers are not arbitrable. Under these circumstances, we find no basis for considering the untimely motion for reconsideration.<sup>1/</sup>

ORDER

The motion for reconsideration is dismissed as untimely.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn and Ricci voted in favor of this decision. None opposed.

DATED: March 25, 1999  
Trenton, New Jersey  
ISSUED: March 26, 1999

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<sup>1/</sup> We also note that our initial decision has become the law of the case by virtue of the absence of a timely motion for reconsideration or appeal. Bahrle v. Exxon Corp., 279 N.J. Super. 5, 21 (App. Div. 1995), aff'd 145 N.J. 144 (1996).