

P.E.R.C. NO. 2004-80

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF SURF CITY,

Appellant,

-and-

Docket No. IA-2001-59

PBA LOCAL 175,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the Borough of Surf City's motion to file a late appeal of an interest arbitration award involving police officers represented by PBA Local 175. The Commission concludes that the Legislature did not intend that the time limits in N.J.S.A. 34:13A-16f(5)(a) be relaxed except in the most unusual circumstances. The Commission concludes that the Borough has not presented any exceptional and extraordinary circumstances to warrant relaxing the deadline for filing an appeal.

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.

P.E.R.C. NO. 2004-80

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF SURF CITY,

Appellant,

-and-

Docket No. IA-2001-59

PBA LOCAL 175,

Respondent.

Appearances:

For the Appellant, Citta, Holazpfel, Zabarsky, Leahey & Simon, attorneys (Robert A. Grietz, of counsel)

For the Respondent, Schaffer, Plotkin & Waldman, a Professional Labor Relations Corporation (Myron Plotkin, consultant)

DECISION

On April 30, 2004, the Borough of Surf City filed a notice of appeal from an interest arbitration award involving the Borough's police officers. The notice challenged the arbitrator's award of a clause stating that an officer's shift schedule shall allow for at least ten hours off duty between the end of one shift and the beginning of another.

N.J.S.A. 34:13A-16f(5) and N.J.S.A. 34:13A-16f(5)(a) state that an interest arbitration award shall be final, binding and irreversible except where, within 14 days of receiving an award, a party files a notice of appeal with the Commission. See also

N.J.A.C. 19:16-8.1(a). An unappealed award must be implemented immediately. N.J.S.A. 34:13A-16f(5)(b).

This award was received by both parties on April 13, 2004. Thus, the notice of appeal should have been filed on or before April 27. Accordingly, the Chairman advised the Borough that the April 30 filing was not timely and that the Commission could not decide whether to entertain the appeal absent a motion to file a late appeal. On May 11, the Borough filed such a motion, together with a certification of its attorney.^{1/}

The attorney certifies that, after receipt of the award, members of the governing body had numerous discussions about whether to appeal it. The attorney explains that the Borough believed that it had 30 days to appeal and that by the time it learned otherwise, the deadline had passed. He also states that the appeal decision was complicated by the fact that, after receipt of the award, the Borough had to review language that the PBA had proposed for inclusion in the parties' contract.^{2/}

In urging us to grant its motion, the Borough emphasizes that the interest arbitration statute is intended to be liberally construed, N.J.S.A. 34:13A-14d, and that the appeal was filed only three days late. It maintains that the public interest must

^{1/} We deny the Borough's request for oral argument on its motion. The matter has been fully briefed.

^{2/} The Borough does not state whether the PBA proposed language to implement the award or language on some other topic.

be considered and that, if the appeal deadline is not tolled, the taxpaying public will be burdened with the costs of the award. By contrast, it contends that the PBA will not be prejudiced by allowing the appeal to go forward because the arbitrator awarded a benefit it did not have before and the PBA was advised of the Borough's appeal decision three days after the statutory deadline. It argues generally that the award constitutes a mistake of law and that the arbitrator did not fully analyze the statutory factors pertaining to the public interest, the financial impact of the award, and the continuity and stability of employment. N.J.S.A. 34:13A-16g(1), (6), and (8).

The PBA urges us to deny the Borough's motion to accept a late appeal. It maintains that the Borough has not offered any legitimate, extenuating circumstances for its delayed filing. It contends that there would be no basis for us to hold any party to the statutory filing deadlines if we were to excuse the Borough's delay because it was allegedly de minimis and the Borough was unaware of N.J.S.A. 34:13A-16f(5)(a).

In Borough of Cliffside Park, P.E.R.C. No. 98-71, 24 NJPER 15 (¶29010 1997), we noted several Court decisions holding that statutory time limits for appeals to administrative agencies are mandatory, jurisdictional and not capable of enlargement by the agency or the courts. Schaible Oil v. N.J. Dept. of Environmental Protection, 246 N.J. Super.29, 31 (App. Div. 1991),

certif. denied, 126 N.J. 387 (1991) (Department of Environmental Protection lacked jurisdiction to hear appeal filed 25 days after receipt of administrative order where statute and regulations set 20-day time period); Department of Community Affairs v. Wertheimer, 177 N.J. Super. 595, 599-600 (App. Div. 1980) (where statute required that appeals be filed within 15 days of receipt of administrative order, Department lacked authority to hear appeal filed after that date); Midland Glass Co. v. Dept. of Environmental Protection, 136 N.J. Super. 194, 197-98 (App. Div. 1975) (15-day time period for requesting hearing on administrative order could not be extended by agency or court); see also Borough of Park Ridge v. Salimone, 21 N.J. 28, 47 (1956); Hess Oil & Chem. Corp. v. Doremus Sport Club, 80 N.J. Super. 393, 396 (App. Div. 1963), certif. denied, 41 N.J. 308 (1964); Scrudato v. Mascot Sav. & Loan Ass'n v. Newark, 50 N.J. Super. 264, 269-71 (App. Div. 1958). Contrast Kaczmarek v. N.J. Turnpike Auth., 77 N.J. 329, 339-40 (1978) (six-month statute of limitations for filing unfair practice charges not jurisdictional because statute expressly tolls limitation period where charging party is prevented from timely filing charge).

At the same time, Cliffside Park noted that our Supreme Court, while endorsing the results in Scrudato and Park Ridge, had also held that time restrictions on an administrative agency's authority to hear a claim may be tolled in particular

circumstances if the legislative purpose underlying the statutory scheme would be effectuated. See White v. Violent Crimes Compensation Bd., 76 N.J. 368, 379, 397 (1978).^{3/} In Caravallo 556 Valley St. Corp. v. Div. of Alcoholic Bev. Control, 351 N.J. Super. 33 (App. Div. 2002), the Appellate Division characterized the approach in Scrudato, Schaible and similar cases as "jurisdictional" and that in White as a "statutory scheme" analysis.

Cliffside Park did not resolve whether we could ever entertain an appeal from an interest arbitration award filed after the time period specified in N.J.S.A. 34:13A-16f(5)(a). The appellant in Cliffside Park filed its appeal 18 days late but did not explain why. Absent a particularized description of the reasons for the delay, Cliffside Park stated that we would not consider whether the 14-day period could be tolled. Accord Peguannock Tp., P.E.R.C. No. 2004-66, 30 NJPER ____ (¶ ____ 2004).

By contrast, the Borough has offered reasons for its delayed filing and we will consider those reasons in light of the above noted framework. We note that, since Cliffside Park, Cavallaro has discussed and harmonized the different judicial approaches to deciding whether an agency has the authority to relax a statutory

^{3/} The Court's holding applied to statutorily-created rights and "substantive" statutes of limitations, 76 N.J. at 379. The latter are defined as limitations found in legislation creating causes of action that did not exist at common law. LaFage v. Jani, 166 N.J. 412, 422 (2001).

deadline. Cavallaro reasoned that even the "jurisdictional" approach, which reflects the principle that administrative agencies have only such authority as is granted them by the Legislature, is ultimately grounded in legislative intent. 351 N.J. Super. at 42. "[I]f it is unclear that the Legislature intended to permit relaxation of any particular time frame, then however the statute is described should not matter. What the Legislature intended controls." Ibid. Cavallaro proceeded to examine the text of, and policy underlying, a statutory scheme that had no express tolling provisions and established deadlines for applying for renewals of liquor licenses. We similarly examine the text and legislative history of the interest arbitration statute, as well as the labor relations process it establishes, in order to decide the following question. Did the Legislature intend to give the Commission the authority to relax the appeal deadline and, if so, under what circumstances?

The Police and Fire Public Interest Arbitration Reform Act (Reform Act), P.L. 1995, c. 425, was enacted in 1996 after a period of intense legislative and judicial scrutiny of the interest arbitration process under the predecessor statute. See PBA Local 207 v. Bor. of Hillsdale, 137 N.J. 71 (1994) and Washington Tp. v. New Jersey PBA Local 206, 137 N.J. 88 (1994) (requiring arbitrators to focus on the full range of statutory factors) and Senator Robert J. Martin, Fixing the Fiscal Police

and Firetrap: A Critique of New Jersey's Compulsory Interest Arbitration Act, 18 Seton Hall Legis. J. 59, 93-99 (1993)

(describing series of bills introduced, beginning in 1992, to amend the predecessor interest arbitration statute). The Reform Act was the product of this examination process and it amended the prior statute in several significant respects. See Biennial Report of the Public Employment Relations Commission on the Public Interest Arbitration Reform Act at 2-4 (1998). We are obligated to give effect to all these legislative changes, of which N.J.S.A. 34:13A-16f(5) (a) is one.

In its statement of legislative findings, N.J.S.A. 34:13A-14 provides that it is New Jersey's public policy to provide an expeditious, effective and binding procedure for the resolution of disputes between law enforcement officers or firefighters and their public employers. The Legislature found that such a procedure was requisite to maintaining the morale of public safety employees; the efficient operation of public safety departments, and the general well-being of the citizens of the State. Ibid.

The impetus for the legislative goals of expedition and finality is apparent when the overall interest arbitration process is considered. Parties engage in negotiations; file for interest arbitration if they are unable to resolve any impasse; engage in mediation and interest arbitration hearings with an

arbitrator; and then receive an award. Parties are without a successor contract during this period; employees do not know what their future wages and benefits will be; and the parties' working relationship may be unsettled. The Reform Act encourages settlement efforts throughout interest arbitration, N.J.S.A. 34:13A-16f(3), and requires that arbitrators fully consider the parties' arguments and evidence and issue reasoned awards, N.J.S.A. 34:13A-16g. However, the Legislature also wanted to ensure that interest arbitration did not continue indefinitely. Cf. PBA Local 292 v. Bor. of North Haledon, 158 N.J. 392, 403 (1999) (finality of grievance arbitration awards enhances their utility as a means of resolving disputes between parties with ongoing relationships).

The 14-day appeal period directed by N.J.S.A. 34:13A-16f(5)(a) is not a mere technicality. Rather, it is directly tied to the implementation of the award and thus the conclusion of the interest arbitration process: an award that is not appealed must be implemented immediately, whereas an award that is appealed is stayed pending the Commission's review. N.J.S.A. 34:13A-16f(5)(b). Further, N.J.S.A. 34:13A-16f(5)(a) apparently was the product of careful legislative consideration, given that it significantly shortened the time period for challenging interest arbitration awards from that which pertained under the predecessor statute. See N.J.S.A. 34:13A-20 (repealed) (arbitrator's order reviewable by Superior Court) and N.J.S.A.

2A:24-7 (action to vacate arbitrator's award must be filed in Superior Court within three months after an award is delivered).

Finality and expedition are not the only aims of the Reform Act. As the Borough emphasizes, N.J.S.A. 34:13A-14b directs that the interest arbitration process should fairly and adequately recognize and give all due consideration to the interests and welfare of the taxpaying public. N.J.S.A. 34:13A-14b. Those objectives are expressed, for example, in Reform Act provisions explicitly requiring arbitral consideration of the CAP law in connection with the public interest, and by amendment of the financial impact criterion to provide more specific direction as to the type of financial evidence that an arbitrator must consider if it is introduced. N.J.S.A. 34:13A-16g(1) and (6).

However, consideration of the public interest, and that of taxpayers, is not typically thwarted by, or in conflict with, the appeal deadline. The public interest also favors finality, as is clearly expressed by the legislative findings in N.J.S.A. 34:13A-14 stating New Jersey's public policy of providing an expeditious, effective and binding procedure for resolving disputes. We appreciate that the 14-day appeal period requires prompt consideration by the parties of their appeal options. However, we believe that this result was understood and intended by the Legislature and was part of its design to provide for an effective and binding procedure. In that vein, the text of

N.J.S.A. 34:13A-16f(5) (a) uses these exceptionally strong words to reflect the Legislature's findings in N.J.S.A. 34:13A-14 and its insistence on achieving finality: "[t]he decision [of the arbitrator] shall be final and binding upon the parties and shall be irreversible" except where a party files an appeal within 14 days of receiving the award. Given these findings and this language, we conclude that the Legislature did not intend to give us the authority to relax N.J.S.A. 34:13A-16f(5) (a) except in the most unusual circumstances. Stated another way, the policies of the Reform Act are not effectuated by allowing a late appeal, absent exceptional and extraordinary circumstances. Such circumstances are not present here.

The Borough primarily argues that it was unaware of the 14-day deadline and believed it had 30 days to decide whether to appeal. This explanation does not constitute grounds to relax a statutory provision that has been in place for eight years, especially where our 1997 decision in Cliffside Park alerted the interest arbitration community to the importance of the deadline and the possibility that it could never be relaxed. While we recognize that the Reform Act is to be liberally construed, N.J.S.A. 34:13A-14d, that liberal construction is intended to further all the purposes enumerated in N.J.S.A. 34:13A-14, including provision for a binding and expeditious procedure. In

a paradoxical but true sense, a liberal construction requires a searching standard for permitting a late appeal.

Further, the Borough has not presented any particularized arguments in its motion as to how adherence to N.J.S.A. 34:13A-16f(5)(a) in this case would contravene the legislative directive to give due weight to the interests of the taxpaying public. Moreover, we note that the awarded contract will expire in six months and the parties will soon be in negotiations for a successor contract. N.J.S.A. 34:13A-16a(1). If the Borough is dissatisfied with the awarded provision requiring ten hours off between shifts, it is not precluded from seeking to adjust it in the upcoming round of negotiations. Compare Horrobin v. Director, Div. of Taxation, 172 N.J. Super. 173, 184 (Tax Court 1979) (circumstances surrounding a homestead rebate application fundamentally different from those in White, where failure to toll timeline would have forever barred plaintiff from relief; in Horrobin homeowner barred in one year could file for rebate the next year).^{4/}

For all these reasons, we deny the Borough's motion to file a late appeal. In so holding, we note that the courts have reached similar conclusions in applying a White "statutory scheme" analysis. See Cavallaro (agency had no authority to

^{4/} We note the employer's inherent right to deviate from a normal work schedule in the event of an emergency. Franklin Tp., P.E.R.C. No. 85-97, 11 NJPER 224, 226 (¶16087 1995)

allow late applications for license renewals beyond 60-day statutory grace period); Schaible (applying jurisdictional analysis but also holding that legislative purpose would not be furthered by extending deadline for appealing environmental penalty assessment); Horrobin. By contrast, statutory timelines for appeals to administrative agencies appear to have been relaxed in cases raising compelling equitable or constitutional concerns. See White (statutory time limit tolled during period where rape victim was incapacitated by her injuries and rape trauma syndrome); Rivera v. Bd. of Review, 127 N.J. 578 (1992) (permitting late appeal by migrant farmworker who did not receive notice of the agency's initial rejection of unemployment benefits; Court cited White and constitutional due process concerns).

ORDER

The Borough's motion to file a late appeal is denied.

BY ORDER OF THE COMMISSION



Lawrence Henderson
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Mastriani and Sandman voted in favor of this decision. None opposed. Commissioner Katz was not present.

DATED: May 27, 2004
Trenton, New Jersey
ISSUED: May 28, 2004