

P.E.R.C. NO. 98-71

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF CLIFFSIDE PARK,

Appellant,

-and-

Docket No. IA-96-138

P.B.A. LOCAL 96,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the Borough of Cliffside Park's motion to file a notice of appeal nunc pro tunc from an Interest Arbitrator's award resolving successor contract negotiations with P.B.A. Local 96. The Commission holds that in order to consider whether the 14-day period for filing an appeal should be tolled in a particular circumstance, a more particularized description of the reasons for the delay is needed than was presented here.

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 Appellant, Diktas Gillen, attorneys (Christos J. Diktas, of counsel)

For the Respondent, Loccke & Correia, attorneys (Leon B. Savetsky, of counsel)

DECISION

On October 27, 1997, the Borough of Cliffside Park filed a motion to appeal nunc pro tunc from a September 17, 1997 interest arbitration award. The motion was accompanied by a certification by the Borough's attorney and a notice of appeal. On October 30, the PBA opposed the motion.

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). The award was received by both parties' attorneys on September 25, 1997.

Pursuant to N.J.S.A. 34:13A-16f(5) (a) and N.J.A.C. 19:16-8.1(a), the notice of appeal was required to be filed by

October 9, 1997. The certification of the Borough's attorney states that, upon reviewing the award, the governing body decided to appeal. The certification does not state why the appeal was not timely filed.

The Borough urges that the brief delay and lack of prejudice to the PBA warrant our granting its motion. The PBA responds that the Borough has not shown good cause or unusual circumstances for extending the deadline for filing the appeal.

Statutory time limits for appeals to administrative agencies have been held to be mandatory, jurisdictional and not capable of enlargement by the agency or the courts. See 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).

While endorsing the results in Scrudato and Park Ridge, our Supreme Court has held that time restrictions on an administrative agency's authority to hear a claim may be tolled in particular circumstances, if consistent with the underlying legislative scheme. See White v. Violent Crimes Compensation Bd., 76 N.J. 368, 379, 387 (1978) (statutory limitation period for filing claims with Violent Crimes Compensation Board tolled during period where rape victim was incapacitated by her injuries and rape trauma syndrome).

We need not decide 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 Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, was intended to afford an expeditious, effective and binding procedure for the resolution of disputes. N.J.S.A. 34:13A-14a. Consistent with that goal, the Reform Act 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). We are satisfied that in order to consider whether the 14-day period should be tolled in a particular circumstance, a more particularized description of the reasons for the delay is needed than was presented here. See Prospect Hill Apts. v. Flemington, 172 N.J. Super. 245, 248 (Tax Court 1979) (no circumstances presented to warrant consideration of tolling of statutory deadline for filing property tax appeals); cf. Schaible Oil, 246 N.J. Super. at 33 (no basis for applying White to corporation's failure to timely appeal administrative order).

For the foregoing reasons, we deny the Borough's motion.

ORDER

The motion to file a notice of appeal nunc pro tunc is denied.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Finn, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioners Boose and Klagholz were not present.

DATED: November 20, 1997
Trenton, New Jersey
ISSUED: November 21, 1997