SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0532-15T4

STATE TROOPERS FRATERNAL ASSOCIATION; STATE TROOPERS NON-COMMISSIONED OFFICERS ASSOCIATION; and STATE TROOPERS SUPERIOR OFFICERS ASSOCIATION,

Plaintiffs-Appellants,

v.

STATE OF NEW JERSEY, CHRISTOPHER CHRISTIE, THE GOVERNOR'S OFFICE OF EMPLOYEE RELATIONS, DIVISION OF STATE POLICE OF THE STATE OF NEW JERSEY, AND SUPERINTENDENT OF STATE POLICE RICARDO FUENTES IN HIS OFFICIAL CAPACITY,

Defendants-Respondents.

Argued November 29, 2017 – Decided January 24, 2018

Before Judges Alvarez, Nugent and Currier.

On appeal from the Division of State Police and the Governor's Office of Employee Relations.

Michael A. Bukosky argued the cause for appellants (Loccke, Correia & Bukosky,

attorneys; Lauren P. Sandy, of counsel and on the briefs).

Steven W. Suflas argued the cause for respondents (Ballard Spahr, LLP, attorneys; Steven W. Suflas and Emily J. Daher, on the brief).

PER CURIAM

Appellants, State Troopers Fraternal Association, State Troopers Non-Commissioned Officers Association, and State Troopers Superior Officers Association, filed this appeal after receiving an August 24, 2015 letter, written by an attorney for the State of New Jersey, Division of State Police (the "Division")[1] during negotiations for a new collective negotiations agreement. The letter informed appellants, among other things, of the Division's decision to suspend the factfinding process, discontinue paying step increases as requested by the factfinder, and initiate compulsory interest arbitration.

In their notice of appeal, appellants characterize the Division's letter and decisions as a "State Agency decision entered on August 24, 2015/inaction." We conclude that the Division's decision, embodied in the quoted letter, does not constitute a final action or inaction of a state administrative agency or officer for purposes of conferring jurisdiction upon the Appellate

[1] For ease of reference, we refer to the Division rather than to all respondents.

Division. We further conclude appellants failed to exhaust their administrative remedies. For these reasons, we dismiss the appeal.

This is the factual background. In June 2012, the collective negotiations agreements between the Division and Appellants expired. Approximately two years later, in 2014, the parties agreed to appoint a factfinder in an attempt to resolve their impasse. In August 2015, in a letter written by its attorney, the Division suspended the factfinding process and decided to initiate compulsory interest arbitration. The letter provided in pertinent part:

> Please accept this letter as formal notice that effective immediately, the Governor's Office of Employee Relations and the Division of State Police are suspending the fact-finding process with respect to the above-listed negotiations units, given the employer's decision to file a Petition to Initiate Compulsory Interest Arbitration with the Public Employment Relations Commission.
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> . . . .
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> Finally, following the strong recommendation of [the] Fact-Finder . . ., the parties agreed that the Division would continue to provide applicable incremental step increases for Troopers in the negotiations units during the fact-finding process only. With the suspension of that process, that agreement is no longer in place. Accordingly, based upon the express language in those contracts and governing case law, increment payments will no longer be continued effective with Pay Period 20, pending the interest arbitration process.

Appellants filed an emergent application with the Appellate Division seeking to stay the Division's decision not to issue salary increment raises pending interest arbitration. The Appellate Division denied appellants' application. Appellants next sought the same emergent relief from the Supreme Court. The Supreme Court denied appellants' request for emergent relief, stating in its order, "it appearing, on this record, that the Court lacks jurisdiction to adjudicate this matter."

Having been unsuccessful in their efforts to stay the Division's decision, appellants filed this appeal, which purports to challenge the "Final Agency Decision of the Division of State Police and Governor's Office of Employee Relations dated August 24, 2015 ordering Incremental Step Increases for State Troopers frozen." Two days later, appellants and the State Troopers Captains Association filed a verified complaint in the Law Division, Mercer County, seeking the same relief sought in this appeal. The Division subsequently petitioned the Public Employment Relations Commission (PERC) to initiate compulsory interest arbitration, as did the State Troopers Non-Commissioned Officers Association. An arbitrator rendered decisions and awards in the matters involving the State Troopers Fraternal Association and the State Troopers Non-Commissioned Officers Association. The

awards included dispositions of the issues raised on this appeal concerning the Division's payment of step increases. The State Troopers Fraternal Association filed an appeal to PERC of the arbitrator's award denying restoration of the frozen salary increments.[2]

We first address the issue of jurisdiction. The Division contends the appellate court is without jurisdiction to hear this matter because appellants have not appealed from a final decision of an administrative agency or officer. Appellants counter that the Division's refusal or failure to implement what appellants claim to be automatic annual increases constitutes either agency action or inaction from which appeals may be taken directly to the Appellate Division. Appellants further contend the doctrine of exhaustion of administrative remedies may be relaxed in cases involving solely a question of law. They contend this case presents such a question.

Having considered the parties' arguments, we conclude we have no jurisdiction. The New Jersey Constitution provides for appellate review of both trial court decisions and administrative agency action. "Appeals may be taken to the Appellate Division

[2] We are unaware of the final disposition of the Order to Show Cause appellants filed in Superior Court and the administrative appeal or appeals the State Troopers Fraternal Association filed.

of the Superior Court from the law and chancery divisions of the Superior Court, the County Courts and in such other causes as may be provided by law." N.J. Const. art. VI, § 5, ¶ 2. "Prerogative writs are superseded and, in lieu thereof, review, hearing and relief shall be afforded in the Superior Court, on terms and in the manner provided by rules of the Supreme Court, as of right, except in criminal causes where such review shall be discretionary." N.J. Const. art. VI, § 5, ¶ 4.

Rule 2:2-3(a)(2) states in pertinent part that appeals may be taken to the Appellate Division as of right:

> (2) to review final decisions or actions of any state administrative agency or officer, and to review the validity of any rule promulgated by such agency or officer excepting matters prescribed by R. 8:2 (tax matters) and matters governed by R. 4:74-8 (Wage Collection Section appeals), except that review pursuant to this subparagraph shall not be maintainable so long as there is available a right of review before any administrative agency or officer, unless the interest of justice requires otherwise[.]

The rule requires in the first instance that an agency decision must be final. The Supreme Court has provided guidance as to when an agency action is final.

A trial court's order is generally "considered final if it disposes of all issues as to all parties." Silviera-Francisco v. Bd. of Educ., 224 N.J. 126, 136 (2016). Thus, "in a multi-party

. . . case, an order granting summary judgment, dismissing all claims against one of several defendants, is not a final order subject to appeal as of right until all claims against the remaining defendants have been resolved by motion or entry of a judgment following a trial." Ibid. The Court added, "[t]he same principle pertains to orders and decisions of state administrative agencies." Ibid.

"Final agency action is also characterized by findings of fact, conclusions of law, a definitive ruling, and a clear statement that the interested party may seek review of the decision and the manner in which that may be accomplished." Id. at 139. So, for example, "a letter without those necessary elements and written in terms that caused the Court to consider the letter no more than 'a polite refusal' by the agency to change its previously stated position could not be considered final agency action for purposes of triggering a right to appeal." Ibid.

In the case before us, neither the Division attorney's letter nor the Division's action referenced in the letter contained any indicia of a final administrative agency action. The letter certainly did not dispose of all outstanding issues the parties were negotiating in an effort to finalize a collective negotiations agreement. The letter did not undertake to set forth comprehensive findings of fact, dispositive conclusions of law, and a definitive

ruling, nor did it contain a clear statement about how appellants could seek review. In short, the letter was nothing more than a statement that the Division was going to pursue its statutory right to initiate compulsory interest arbitration and therefore discontinue the course of action it had undertaken to facilitate the factfinding process.

Not only did the Division attorney's letter lack any indicia of a final agency decision or action, but appellants also had "available a right of review before an[] administrative agency." Rule 2:2-3(a)(2). This is evidenced by the course the parties chose in this very case. They initiated compulsory interest arbitration, an arbitrator rendered two decisions, and, in at least one of those instances, appellants exercised their right to take an administrative appeal to PERC.

The Supreme Court's decision in In re County of Atlantic, 230 N.J. 237 (2017), represents a further instance in which collective bargaining units exhausted their administrative remedies before resorting to an appeal to the Appellate Division. Like the case before us, the issue in In re County of Atlantic was "whether the parties to the specific collective negotiations agreements . . . at issue . . . were required to continue scheduled salary increases during the period between the expiration of those contracts and the formation of their successor agreements." 230 N.J. at 242.

When Atlantic County informed the bargaining units it would no longer implement the incremental salary scheme provided for in those contracts, the unions filed charges with PERC, claiming that the County had engaged in an unfair labor practice. Ibid. Only after a hearing examiner and PERC rendered decisions did the unions seek review in the Appellate Division. Id. at 242-43.

Here, regardless of whether appellants characterize the Division attorney's letter as administrative action, namely, terminating payments respondents had been making at the urging of the fact finder; or inaction, namely, not making payments respondents were required to make; neither the letter nor the cessation of payments constituted final agency action. Consequently, the Appellate Division does not have jurisdiction under Rule 2:2-3(a)(2). The appeal must be dismissed.

Appeal dismissed.