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parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1136-15T4

IN THE MATTER OF RAMONA
CARTER, MERCER COUNTY
DEPARTMENT OF PUBLIC
SAFETY.

Argued December 13, 2017 – Decided January 3, 2018

Before Judges Alvarez and Nugent.

On appeal from the Civil Service Commission,
Docket No. 2015-967.

Mark W. Catanzaro argued the cause for
appellant Ramona Carter.

Kristina E. Chubenko, Assistant County
Counsel, argued the cause for respondent
Mercer County Department of Public Safety
(Arthur R. Sypek, Jr., Mercer County Counsel,
attorney; Kristina E. Chubenko, of counsel and
on the brief).

Christopher S. Porrino, Attorney General,
attorney for respondent Civil Service
Commission (Pamela N. Ullman, Deputy Attorney
General, on the statement in lieu of brief).

PER CURIAM

Appellant, Ramona Carter, appeals from the final
administrative action of the Civil Service Commission (Commission)

upholding her ten-day suspension for failing to hand scan in upon reporting late for a work shift. We affirm.

Appellant is a correction officer employed by the Mercer County Department of Public Safety at the Mercer County Correction Center. On December 24, 2013, she was served with a preliminary notice of disciplinary action (PNDA) charging her with conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3(a)(6), and other sufficient cause, N.J.A.C. 4A:2-2.3(a)(12), namely, violation of administration procedures or regulations involving safety and security. Specifically, appellant was charged with violating standard operating procedure (SOP) 137 concerning the Correction Center's timekeeping system. The PNDA specified appellant had failed to hand-scan in upon reporting for duty on December 16, 2013. The PNDA informed appellant that disciplinary action, including a thirty-day suspension, could be taken against her.

The conduct unbecoming charge was not sustained at the ensuing departmental hearing. The remaining charge, "other sufficient cause," based on appellant's violation of the SOP, was sustained. On September 19, 2014, appellant was served with a final notice of disciplinary action (FNDA) documenting her suspension for ten working days.

Appellant filed an administrative appeal and the matter was referred to the Office of Administrative Law as a contested case.

An Administrative Law Judge (ALJ) conducted a hearing on August 20, 2015.

The sole witness to testify before the ALJ was the Captain of the Mercer County Correction Center. The Captain authenticated records that established appellant was approximately one-half hour late for her December 16, 2013 tour of duty. She was not charged for being late because officers cannot be disciplined "on the first step" unless they are late three times within a six-month period.

The Correction Center uses a hand-scanning system for documenting the time the staff works. When staff report for duty, they must "hand scan in," and when they leave they must "hand scan out." This procedure, contained in SOP 137, provides:

Policy

It is the policy of the Mercer County Correction Center to provide an accurate accounting of Time & Attendance. To this end the Kronos Timekeeping System will be used to account for hours worked by Correction Center employees. The Kronos Timekeeping System will also be used to document employee lateness. The Kronos system identified each employee by the unique size and shape of their hands. The system will only identify the employee through the hand scan.

Correction Center employees must scan "In and Out" each day. Failure to scan will result in no total hours in the Kronos system; therefore no pay is logged for that day.

Failure to scan out two times during a pay period will subject an employee to an investigation and may result in disciplinary action.

Responsibilities

Every employee at the Mercer County Correction Center will be required to "Hand Scan" prior to beginning their Tour of Duty. Employees will also be required to "Hand Scan" prior to leaving the Mercer County Correction Center when their Tour is completed. Time & Attendance personnel at the Mercer County Correction Center shall maintain control and management of the system and will assign each employee an Identification Number to be used with the Kronos Hand punch 3000. Each employee shall be initially scanned and instructed in the basic use of the system.

On the day appellant was late, she did not hand scan in, but she did hand scan out.

The Captain explained the hand-scanning timekeeping system lets the administration know who is in the Correction Center and who is not, and for what hours personnel are present. According to the Captain, appellant violated an administrative procedure involving safety and security. The Captain identified a "Mercer County Public Safety Table of Offenses and Penalties – Correction Center." According to the table, a third infraction for violating an administrative procedure or regulation involving safety subjected the violator to a penalty ranging from a five-day suspension to removal from office.

Appellant argued that SOP 137 provides that failing to scan out may result in disciplinary action. Nothing in SOP 137 forewarns of discipline for failure to scan in. Appellant argued that the absence of a disciplinary measure for not scanning in was due to another requirement that a tardy officer was required to report to the shift commander, who would then note the officer's late arrival and document the time the officer arrived.

Based on the Captain's testimony, the ALJ determined appellant had violated SOP 137 by not scanning in after arriving late for work on December 16, 2013. The ALJ accepted the Captain's testimony that SOP 137, though a timekeeping procedure, "involves safety and security, particularly in the case of . . . corrections officer[s] since they interact with the inmates more regularly than other . . . employees." The ALJ explained that the "[o]ther sufficient cause" charge "is an offense for conduct that violates the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." The ALJ concluded appellant's conduct violated the "standard of good behavior."

The ALJ also upheld the ten-day suspension. He noted this was appellant's third infraction. According to the Mercer County Public Safety Table of Offenses and Penalties for the Correction Center, the penalty for a third violation of an administrative

procedure involving safety and security ranges from a five-day suspension to removal from office. The ALJ determined appellant's suspension was consistent "with the disciplinary process outlined in SOP 137 and in [the Mercer County Correction Center's] table of offenses." The ALJ explained:

After having considered all of the proofs offered in this matter, and the impact upon the institution regarding the behavior by appellant herein, and after having given due deference to the impact of and the role to be considered by and relative to progressive discipline, I **CONCLUDE** that appellant's violation is significant enough to warrant a penalty, which, in part, is meant to impress upon her, as well as others, the seriousness of any further infractions by her in that regard. Therefore, I **CONCLUDE** that the imposition of the ten-day suspension was the appropriate penalty and consistent with the penalties specified in SOP 137 and [Mercer County Correction Center's] table of offenses.

Appellant filed exceptions to the ALJ's initial decision. On October 22, 2015, the Commission issued a final administrative decision and upheld the ALJ's initial decision. This appeal followed.

On appeal, appellant argues that the ALJ "expanded the charge beyond what was pled and found a violation of a policy which did not call for discipline." According to appellant, by adopting the ALJ's findings, the Commission acted contrary to law. Appellant repeats the argument she made to the ALJ: "the purpose of scanning

in is to make sure that the facility can account for your time and make sure you do not arrive late or leave early." Appellant claims she fulfilled this obligation by completing a form upon her arrival and notifying her supervisor.

Our review of the Commission's decision is limited. Karins v. City of Atl. City, 152 N.J. 532, 540 (1998) (citation omitted). We will not disturb the Commission's final determination unless it is arbitrary, capricious, or unreasonable. Ibid. (citation omitted). A "strong presumption of reasonableness attaches" to the Commission's final administrative decisions. In re Carroll, 339 N.J. Super. 429, 437 (App. Div. 2001) (quoting In re Vey, 272 N.J. Super. 199, 205) (App. Div. 1993), aff'd, 135 N.J. 306 (1994)). That is so because agencies generally have "expertise and superior knowledge of a particular field." Outland v. Board of Trustees of the Teachers' Pension & Annuity Fund, 326 N.J. Super. 395, 400 (App. Div. 1999) (citation omitted). Thus, "[a]n administrative agency's interpretation of statutes and regulations within its implementing and enforcing responsibility is ordinarily entitled to our deference." Wnuck v. N.J. Div. of Motor Vehicles, 337 N.J. Super. 52, 56 (App. Div. 2001) (quoting In re Appeal by Progressive Cas. Ins. Co., 307 N.J. Super. 93, 102 (App. Div. 1997)).

In determining whether agency action is arbitrary, capricious, or unreasonable, a reviewing court must examine:

(1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

[In re Stallworth, 208 N.J. 182, 194 (2011) (quoting In re Carter, 191 N.J. 474, 482-83 (2007)).]

"The application of those principles is not limited to whether a violation warranting discipline has been proven; this 'deferential standard applies to the review of disciplinary sanctions as well.'" Id. at 195 (quoting In Re Herrmann, 192 N.J. 19, 28 (2007)). Thus, "when reviewing administrative sanctions, appellate courts should consider whether the 'punishment is so disproportionate to the offense, in the light of all of the circumstances, as to be shocking to one's sense of fairness.'" Ibid. (quoting Carter, 191 N.J. at 484).

In applying these principles to the facts of the case before us, we do not conclude the Commission's action was arbitrary or capricious. Appellant was charged with violating an operating procedure involving safety and security at the Mercer County

Correction Center. The Center's Captain testified without contradiction that the Center's timekeeping system not only records hours for purposes of paying employees, but also lets the administration know who is in the building and who is not and for what hours they are present. Thus, the policy that requires employees to scan in and out also implicates the facility's security and safety.


It can hardly be said that the Commission's action in upholding appellant's discipline is arbitrary and capricious. The Commission's action violated no express or implied legislative policy, the record contains substantial evidence that supports the findings on which the Commission based its decision, and the Commission did not misapply the law. Appellant's argument to the contrary is based on a narrow construction of SOP 137 that overlooks the security implications of the SOP and the administration's need to know who is present at the correction center at any given time.

Moreover, we do not find appellant's punishment so disproportionate to the offense, in the light of all of the circumstances, as to be shocking to one's sense of fairness. This was appellant's third infraction and each of the previous infractions involved violations of procedures involving safety and security. The Mercer County Public Safety Table of Offenses and

Penalties for the Correction Center provides a uniform system of sanctions. Appellant's suspension for a third infraction of a policy involving safety and security falls squarely within the table and is consistent with the objectives of a progressive disciplinary scheme.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION