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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1555-16T2

IN THE MATTER THE OF CITY OF PATERSON FIRE DEPARTMENT MUTUAL AID PLAN.

Submitted November 28, 2017 – Decided January 19, 2018

Before Judges Reisner and Gilson.

On appeal from the Department of Community Affairs.

Steven S. Glickman, attorney for appellant.

Christopher S. Porrino, Attorney General, attorney for respondent (Melissa Dutton Schaffer, Assistant Attorney General, of counsel; Melanie R. Walter, Deputy Attorney General, on the brief).

PER CURIAM

The City of Paterson (City) appeals from a November 4, 2016 final agency decision by the Division of Fire Safety, Department of Community Affairs (DCA), which required the City to submit a Local Fire Mutual Aid Plan (Aid Plan) compliant with the Fire Service Resource Emergency Deployment Act (Act), N.J.S.A. 52:14E-11 to -22. The City also appeals from a November 14, 2016 order

of the DCA that denied the City's request to stay the November 4, 2016 order. We affirm because the DCA's final order is based on a reasonable interpretation of the Act.

I.

In 2003, the Legislature passed the Act "to establish a mechanism for the coordination of fire service resources throughout the State to facilitate a quick and efficient response to any emergency incident . . . ." N.J.S.A. 52:14E-12. The DCA, through its Division of Fire Safety, is the state agency responsible for administering and enforcing the Act. N.J.S.A. 52:14E-20. The DCA is also authorized to promulgate and enforce rules and regulations to implement the Act. Ibid.; see N.J.A.C. 5:75A-1 to -3.7.

The Act requires every municipality or fire district to prepare and submit an Aid Plan. N.J.S.A. 52:14E-14. An Aid Plan is defined as:

> [A] plan, prepared and adopted by a municipality or fire district . . . which sets forth the measures that are to be implemented in those instances when the fire service resources of the municipality or fire district cannot adequately respond to an emergency incident or a local fire emergency disaster and, as a consequence, it is necessary for the municipality or fire district to request assistance and fire service resources from contiguous municipalities.
>
> [N.J.S.A. 52:14E-13.]

Municipalities or fire districts must submit an Aid Plan every two years to the county fire coordinator, and in some circumstances to the state fire coordinator. N.J.S.A. 52:14E-14. The Director of the Division of Fire Safety is the "[s]tate fire coordinator." N.J.S.A. 52:14E-13. The state fire coordinator, in turn, appoints "county fire coordinator[s]." N.J.S.A. 52:14E-15. Thus, the DCA oversees each municipality's or fire district's compliance with the Act through the state and county fire coordinators. Ibid.

The City has prepared eight plans since the Act became effective in 2003. In 2015, a dispute arose between the City and the DCA concerning the City's Aid Plan. In its 2014-2015 Aid Plan, the City included the fire departments of municipalities that did not directly border the City. The DCA took the position that such municipalities were not "contiguous" as required by the Act. While the DCA allowed the City to use its 2014-2015 Aid Plan, it directed the City to prepare and submit an Aid Plan for 2016-2017 that did not include fire departments of municipalities that did not directly border the City. The 2016-2017 Aid Plan was due at the end of 2015, but the City failed to submit a compliant plan.

On August 29, 2016, the DCA ordered the City to submit its 2016-2017 Aid Plan by September 15, 2016. That order also advised the City that it had fifteen days to submit a request for a contested hearing before an administrative law judge. The City did not request such a hearing, nor did it submit an Aid Plan by September 15, 2016.

Thus, on November 4, 2016, the DCA issued a final order requiring the City to submit a compliant Aid Plan no later than November 30, 2016. The order also assessed a $1000 penalty and informed the City that if it did not submit a compliant plan, starting December 1, 2016, it would be assessed $1000 per day.

On November 9, 2016, the City submitted four potential Aid Plans and asked the DCA to decide which plan it should implement. The City also requested a stay of the November 4, 2016 final order. In response, the DCA informed the City that two of the four potential plans were compliant, and it directed the City to select one of those two plans for implementation. The DCA also denied the City's request for a stay of the final order. Finally, the DCA withdrew the assessed monetary penalties.

Thereafter, the City selected one of the two compliant Aid Plans for implementation. The City also appealed the November 4, 2016, and November 14, 2016 final orders and requested a stay from us. We denied the stay motion.

II.

On appeal, the City argues that the DCA's final orders violate the express and implied terms of the Act. Specifically, the City contends that the Act does not require that Aid Plans include only fire departments from municipalities that directly border the City. The City also argues that the DCA had previously approved Aid Plans with fire departments from municipalities that did not directly border the City. Finally, the City argues that there is no evidence in the record to support the DCA's final orders and, therefore, the orders are arbitrary and capricious.

Our role in reviewing an administrative agency's final decision is limited. In re Stallworth, 208 N.J. 182, 194 (2011). To reverse an agency's decision, we must find that the agency's decision was "arbitrary, capricious, or unreasonable, or [] not supported by substantial credible evidence in the record as a whole." Ibid. (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980)). Accordingly, "our scope of review is guided by three major inquiries: (1) whether the agency's decision conforms with relevant law; (2) whether the decision is supported by substantial credible evidence in the record; and (3) whether, in applying the law to the facts, the administrative agency clearly erred in reaching its conclusion." Twp. Pharmacy v. Div. of Med.

Assistance & Health Servs., 432 N.J. Super. 273, 283-84 (App. Div. 2013) (citing In re Stallworth, 208 N.J. at 194).

We "defer to an agency's interpretation of . . . [a] regulation, within the sphere of [its] authority, unless the interpretation is 'plainly unreasonable.'" U.S. Bank, N.A. v. Hough, 210 N.J. 187, 200 (2012) (alterations in original) (quoting In re Election Law Enf't Comm'n Advisory Op. No. 01-2008, 201 N.J. 254, 262 (2010)). An appellate court, however, is "in no way bound by the agency's interpretation of a statute or its determination of a strictly legal issue." In re Taylor, 158 N.J. 644, 658 (1999) (quoting Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85, 93 (1973)). Applying these well-established standards, we discern no basis for disturbing the DCA's final agency decision in this matter.

The dispute on this appeal centers on the word "contiguous." The Act states that an Aid Plan must set forth the measures that a municipality will implement when it needs assistance from "contiguous municipalities." N.J.S.A. 52:14E-13. The Act does not define the word contiguous. The City argues that contiguous can include municipalities that do not directly border the City. In that regard, the City cites to the dictionary definition of the word contiguous, which includes "next or near in time or sequence."

The DCA, in contrast, contends that contiguous means municipalities immediately adjacent to one another with borders that touch. Thus, the DCA argues that in a fire emergency, bordering municipalities should be called first. N.J.A.C. 5:75A-2.6(a). Thereafter, if additional resources are needed, such resources can be deployed at the direction of the county, regional, and state fire coordinators. N.J.A.C. 5:75A-2.6(a) to (c).

Contiguous is defined as: "1. being in actual contact: touching along a boundary or at a point[;] 2. ADJACENT[;] 3. next or near in time or sequence[;] 4. touching or connected throughout in an unbroken sequence[.]" Merriam-Webster, https://www.merriam-webster.com/dictionary/contiguous (last visited Dec. 22, 2017). The first, second, and fourth sections of that definition support the DCA's interpretation. While the City relies on the third part of the definition, the definition does not completely provide the answer. Instead, the issue here is resolved by looking to the Act.

The Act is designed to "establish a mechanism for the coordination of fire service resources throughout the State . . . ." N.J.S.A. 52:14E-12. The Act then charges the DCA to oversee and coordinate local Aid Plans. The DCA's interpretation of contiguous is a reasonable construction of the Act. Significantly, the DCA's construction allows it to coordinate fire

service resources through the county, regional, and state fire coordinators. Consequently, we find nothing arbitrary, capricious, or unreasonable in the DCA's interpretation of the Act. Nor do we find that the DCA's construction of the Act is contrary to the plain language of the Act.

We also reject the City's argument that because it had previous Aid Plans with fire departments from municipalities that did not border the City, it should be allowed to continue to submit such plans. The City failed to request an administrative hearing to develop a factual record concerning its prior Aid Plans. Moreover, the City improperly relies on materials that were not part of the record before the DCA. In short, the City did not develop the record to establish such an argument. Just as importantly, there is no showing that the DCA should be estopped from enforcing the Act consistent with its current interpretation.

Finally, we also reject the City's argument that the record does not support the DCA's final order. The DCA's position relies on an interpretation of the word contiguous as used in the Act. The record, including the Act's implementing regulations, support the DCA's interpretation. See N.J.A.C. 5:75A-1.5 and -2.6. It is significant to note that the City did not timely challenge those regulations. See In re Comm'r of Ins.'s Issuance of Orders A-92-189 and A-92-212, 274 N.J. Super. 385, 395-96 (App. Div.

1993) (stating that those affected by administrative rules or regulations are encouraged to bring facial challenges within forty-five days, and the failure to timely challenge the rules or regulations may result in dismissal of the appeal). Here, the DCA readopted N.J.A.C. 5:75A on September 19, 2016. See 48 N.J.R. 2129(b) (Sept. 19, 2016). Thus, the forty-five day time period within which the City could challenge N.J.A.C. 5:75A expired on November 3, 2016. Accordingly, the City's challenge to the DCA regulations is not timely.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION