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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the 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-1323-21**

**RYAN FUNK, FRANK ROMAYO,
RORY KEARNS, SEAN
MCMAHON, JAIMESE MORRIS,
DOBRE RISTESKI, GREGORY
WILLIS, GIOVANNI LORETO
and OSCAR CARRERA,**

Plaintiffs-Appellants,

v.

TOWNSHIP OF WEST ORANGE,

Defendant-Respondent.

Argued November 1, 2022 – Decided November 15, 2022

Before Judges Gilson and Gummer.

On appeal from the Superior Court of New Jersey, Law
Division, Essex County, Docket No. L-8463-21.

Jeffrey D. Catrambone argued the cause for appellants
(Sciarra & Catrambone, LLC, attorneys; Charles J.
Sciarra, of counsel and on the briefs; Jeffrey D.
Catrambone, on the briefs).

Mark Y. Moon argued the cause for respondent (Trenk Isabel Siddiqi & Shahdanian PC, attorneys; Richard D. Trenk, of counsel and on the brief; Mark Y. Moon, on the brief).

PER CURIAM

Plaintiffs are police officers employed by the Township of West Orange (Township). On November 9, 2021, they filed a lawsuit against the Township in Superior Court, contending the Township had violated N.J.S.A. 40A:14-147 by placing plaintiffs on unpaid leave pursuant to the Township's COVID-19 vaccination and testing policy. Plaintiffs sought an order reinstating them or placing them on paid status and awarding them back pay. In a December 1, 2021 order, the trial court dismissed plaintiffs' complaint and denied their requested relief. On January 5, 2022, plaintiffs filed with us a notice of appeal of that order.

On March 15, 2022, each plaintiff filed with the Civil Service Commission (CSC) a major disciplinary appeal regarding the unpaid leaves of absence imposed by the Township pursuant to its COVID-19 policy. On June 20, 2022, the CSC rendered a decision, awarding plaintiffs, who had returned to work under a mask-and-test option on March 25, 2022, back pay for the unpaid-leave period.

In the Civil Service Act (the Act), N.J.S.A. 11A:1-1 to 12-6, the Legislature authorized the CSC to "implement and enforce" the Act, N.J.S.A. 11A:2-2, and to "[a]dopt and enforce rules to carry out [the Act] and to effectively implement a comprehensive personnel management system," N.J.S.A. 11A:2-6(d). The CSC's rules are "the means by which the statutory purposes of the merit employment system are carried out." N.J.A.C. 4A:1-2(c).

The parties agree the Township is a civil-service municipality. See Taaffe v. Neill, 132 N.J.L. 289, 290 (1944) ("The [Township] adopted the commission form of government and also the provisions of the [Act]."). Consequently, plaintiffs and the Township are subject to the Act and the regulations promulgated by the CSC. N.J.A.C. 4A:1-1.2(a) (requiring "[a]ll appointing authorities and employees subject to [the Act] to comply with" the CSC's rules).

The CSC clearly has primary jurisdiction over this matter. The Legislature expressly authorized the CSC to "establish by rule, procedures for hearings and suspensions with or without pay." N.J.S.A. 11A:2-13. Pursuant to that express authority, the CSC promulgated a regulation setting forth the procedures civil-service employers must follow when immediately suspending an employee without pay. N.J.A.C. 4A:2-2.5. That regulation provides that employees who do not agree with their immediate suspension without pay have

the right to seek relief before the CSC. N.J.A.C. 4A:2-2.5(e); see also N.J.A.C. 4A:2-1.2 (governing applications for a stay and interim relief from the CSC). Parties dissatisfied with the CSC's final determination may appeal to the Appellate Division. R. 2:2-3(a)(2).

Plaintiffs' initial failure to seek relief from the CSC and subsequent simultaneous pursuit of relief with both the CSC and this court warrant dismissal of this appeal. "An appeal to this court may not be maintained 'so long as there is available a right of review before any administrative agency or officer, unless the interest of justice requires otherwise.'" Ortiz v. N.J. Dep't of Corrections, 406 N.J. Super. 63, 69 (App. Div. 2009) (quoting R. 2:2-3(a)(2)). "The obligation to exhaust 'administrative remedies before resort to the courts is a firmly embedded judicial principle.'" Ibid. (quoting Garrow v. Elizabeth Gen. Hosp. & Dispensary, 79 N.J. 549, 559 (1979)); see also Borough of Seaside Park v. Comm'r of N.J. Dep't of Educ., 432 N.J. Super. 167, 202 (App. Div. 2013) ("Requiring exhaustion of administrative remedies before seeking judicial relief is a tenet of administrative law and established by court rule.").

The exhaustion doctrine

is applied when it will ensure a claim will initially be heard by a body possessing expertise, when it allows for the creation of a factual record that will promote for meaningful appellate review, or when it fosters a

potential for terminating the controversy, since an agency decision might satisfy the parties and obviate resort to the courts.

[Rosenstein v. State, Dep't of Treas., Div. of Pensions & Benefits, 438 N.J. Super. 491, 498 (App. Div. 2014).]

The application of the doctrine may be "relaxed" under certain circumstances "in the interest of justice." Ortiz, 406 N.J. Super. at 69; see also Gripenburg v. Twp. of Ocean, 220 N.J. 239, 261 (2015) (noting exceptions to the application of the exhaustion doctrine). None of those circumstances apply here. Accordingly, we dismiss the appeal.

Dismissed.

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



CLERK OF THE APPELLATE DIVISION