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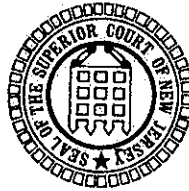
NOT FOR PUBLICATON WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY

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Joseph S. Conte
Judge Superior Court



August 18, 2008

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Re: Flanagan v. Borough of Cliffside Park
Docket No. BER-L-1002-08

Dear Counsel:

This action arises out of Plaintiff's Complaint in Lieu of Prerogative Writs against the Borough of Cliffside Park. Plaintiff, Jackie Flanagan, seeks to dismiss all disciplinary charges against her.

A one-day bench trial was held on July 23, 2008, wherein no witnesses were presented by either Plaintiff or Defendant. At the conclusion of trial, this Court reserved its ruling on the issues presented by counsel. The following is the Court's opinion in the above-referenced matter.

Statement of the Case

Plaintiff is employed as a police officer by Defendant. On November 3, 2007, Plaintiff was required to attend a driver improvement program during her regularly scheduled work hours. Plaintiff failed to attend the training program and did not otherwise report for work as scheduled. On November 19, 2007, Plaintiff was provided with a preliminary notice of disciplinary action signed by Police Chief Donald Keane informing her that she faced the prospect of "minor disciplinary action."

On November 27, 2007, Plaintiff requested discovery and that a hearing date be set, denied the charges, and contended that the notice did not conform to the requirements of N.J.S.A. 40A:14-147. On December 13, 2007, Defendant enclosed discovery along with a letter dated the same informing Plaintiff that a written response must be received within fifteen (15) days. On December 31, 2007, Plaintiff again requested a hearing and stated that the charges did not comply with the Statute. On January 10, 2008, Defendant sent a final notice of minor disciplinary action to the Plaintiff indicating that she had been found guilty and that she would be suspended for two (2) days without pay. Plaintiff was subsequently informed that this decision was final and that in accordance with contractual procedures, further grievances must be presented to the municipality's governing body or delegated representative within ten (10) working days. No further grievances were received.

Parties' Contentions

Plaintiff argues that the Court should dismiss all disciplinary charges against her because Defendant failed to schedule and hold a hearing before imposing disciplinary sanctions on Plaintiff. Plaintiff contends that N.J.S.A. 40A:14-147 entitles a police officer to a hearing before disciplinary sanctions can be imposed. Plaintiff also contends that Cliffside Park Borough Ordinance 2-17.19 provides that a police officer can only be suspended from employment after given the opportunity for a fair and impartial trial upon the charges. Therefore, Plaintiff concludes that the failure of Defendant to provide Plaintiff with a fair and impartial hearing prior to the imposition of disciplinary sanctions is a fatal violation of both N.J.S.A. 40A:14-147 and Cliffside Park Borough Ordinance 2-17.19. Despite multiple requests, Plaintiff was never given the opportunity of a hearing at which Plaintiff could confront and cross examine her accusers, challenge the charges being levied against her, present her side of the events, or exercise any of the fundamental underpinnings of due process.

Moreover, Plaintiff submits that the language of N.J.S.A. 40A:14-147 is clear, and the collective bargaining agreement between the two parties does not excuse the Defendant from complying with the Statute. The present circumstances have been previously examined by the Court and mandate that failure to comply with N.J.S.A. 40A:14-147 warrants the full dismissal of disciplinary charges. In Tuttle v. Borough of Ho-Ho-Kus, Dkt. # L-8266-01 (Law Div. Jan. 25, 2002), Judge Harris issued an order granting summary judgment for the plaintiff dismissing all disciplinary charges for failure by the Defendant to comply with N.J.S.A. 40A:14-147 and provide a disciplinary hearing.

Defendant argues that the Court should dismiss the complaint with prejudice and award Defendant attorney's fees, costs of suit, and such other and further relief as the Court may deem

just and equitable. Defendant contends that Plaintiff failed to exhaust her elected remedy and was afforded due process through the disciplinary proceedings. After receipt of the final notice of disciplinary action dated January 10, 2008, Plaintiff presented her grievance of the decision on January 12, 2008. This represents Step One of the contractual agreement for the disposition of employee grievances established by the collective bargaining agreement between the parties. After being notified on January 18, 2008 that the January 10, 2008 notice represented Chief Keane's final decision, the Plaintiff failed to complete Step Two, which required Plaintiff to present further grievances to the governing body within ten (10) days. Instead, Plaintiff brought the instant action. Thus, Defendant contends that Plaintiff's complaint should be dismissed because Plaintiff failed to exhaust her elected remedy before bringing suit.

Furthermore, Defendant disputes Plaintiff's assertion that she was denied due process and an opportunity to be heard. Plaintiff was served with a preliminary notice of minor disciplinary charges and was informed that any timely written response would be considered in determining whether a disciplinary infraction had been committed and, if so, the appropriate sanctions to impose. Defendant relies on the holding in FOP Lodge #1 Camden v. Camden, 368 N.J. Super. 56 (Law Div. 2003), in support of its contention that absent a dispute over material fact, a plenary hearing is not required. Defendant maintains that since there are no issues of material fact concerning Plaintiff's failure to attend the driver improvement program, Plaintiff is not entitled to a hearing.

Findings of Fact and Conclusions of Law

Based on the parties' submissions and the record below, the Court finds that Plaintiff, Jackie Flanagan, was entitled to a disciplinary hearing pursuant to N.J.S.A. 40A:14-147, which

she was not afforded by Defendant, Borough of Cliffside Park. As such, all disciplinary charges against Plaintiff shall be dismissed.

N.J.S.A. 40A:14-147 provides in pertinent part:

Except as otherwise provided by law, no permanent member or officer of the police department or force shall be . . . suspended, removed, fined or reduced in rank from or in office, employment, or position therein, except for just cause as hereinbefore provided and then only upon a written complaint setting forth the charge or charges against such member or officer. The complaint shall be filed in the office of the body, officer or officers having charge of the department or force wherein the complaint is made and a copy shall be served upon the member or officer so charged, with notice of a designated hearing thereon by the proper authorities, which shall be not less than 10 nor more than 30 days from date of service of the complaint. . . .

A failure to comply with said provisions as to the service of the complaint and the time within which a complaint is to be filed shall require a dismissal of the complaint.

The Statute clearly sets forth that a complaint must be filed with the proper department and that a copy of this complaint with notice of a scheduled hearing must be served upon the charged officer. The language chosen by the Legislature for the Statute is not permissive, but rather is mandatory in this respect. The Statute further provides that failure to comply with said provisions, such as the time within which a complaint is to be filed, shall require a dismissal of the complaint.

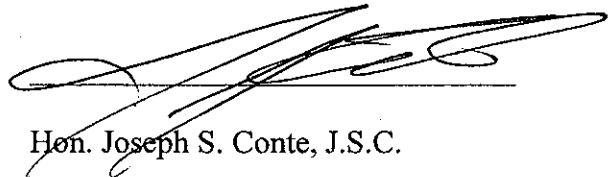
The Court finds that Plaintiff is entitled to a hearing under the Statute. Plaintiff was suspended without being afforded the Statutorily required hearing despite numerous requests for same. Furthermore, Plaintiff was not afforded the required hearing within the prescribed thirty (30) days, as required by the Statute. Therefore, the disciplinary charges against Plaintiff shall be dismissed.

Additionally, the Court finds that the language of N.J.S.A. 40A:14-147 is clear on its face and that a collective bargaining agreement does not excuse Defendant from complying with the Statute's requirements. The present matter is properly before the Court because Plaintiff did not receive a hearing, as required by law. Had Plaintiff received notice of the mandatory hearing, then the proper grievance procedures set in place by the collective bargaining agreement would have been put into effect.

Last, the Court finds that FOP Lodge #1 Camden v. Camden, supra, 368 N.J. Super. 56, holds no persuasive weight. First, FOP Lodge #1 Camden is a Law Division case and therefore is not binding on this Court. See Current N.J. Court Rules, comment 3.1 on R. 1:36 (2008). Second, this Court disagrees with the holding in FOP Lodge #1 Camden, supra, 368 N.J. Super. at 65. The FOP Lodge #1 Camden court held, in part, that a police officer is entitled to a hearing under the Statute if there is material fact in dispute. Id. However, as this Court reads it, the Statute does not set forth "an issue of material fact" as the triggering factor for a plenary hearing. The plain text of the Statute clearly identifies a suspension, removal, fine, or reduced ranking as the triggering factors for a plenary hearing. Since Plaintiff was suspended, she was entitled to a hearing and, as such, FOP Lodge #1 Camden does not hold precedential weight.

IT IS HEREBY ORDERED that judgment in favor of Plaintiff be entered and that the disciplinary charges against her be dismissed in their entirety. Plaintiff shall submit an order reflecting the Court's decision.

Dated: August 18, 2008



Hon. Joseph S. Conte, J.S.C.