

*In the Matter of Township of Bloomfield Maintenance Workers Association*  
DOP Docket No. 2004-3695  
**(Merit System Board, decided January 12, 2005)**

The Township of Bloomfield Maintenance Workers Association (MWA) appeals the Township of Bloomfield's (Township) practice of fining its employees as a form of minor discipline.

In a letter dated March 26, 2004, the MWA contends that the Township has made it a practice of fining individuals as a form of minor discipline. Additionally, the MWA claims that these fines are not associated with any suspension. The fines consist of docking an employee's pay. The MWA argues that this practice by the Township violates *N.J.A.C. 4A:2-2.4*. Further, in a follow-up letter dated June 1, 2004, the MWA asserts that the grievance procedures specified in its negotiated agreement are not followed. In support of its contentions, the MWA submits numerous disciplinary action forms which indicate that employees are being fined for violating various departmental rules. The disciplinary action forms range in date from as long ago as 1995 to as recent as an April 29, 2004 fine of eight hours work without pay for employee Anthony Christiano. Moreover, the MWA includes copies of memorandums concerning the grievance procedures indicated in the negotiated agreement.

In its response dated June 28, 2004, the Township, represented by Joseph M. Hannon, Esq., argues that *N.J.A.C. 4A:2-2.4* is not applicable in the instant matter. It contends that the fines the MWA are complaining about are minor discipline per *N.J.A.C. 4A:2-3.1(a)*. The Township argues that the controlling provision is *N.J.A.C. 4A:2-3.1(d)*, which provides that an appointing authority may establish procedures for processing minor discipline and grievances. In this regard, the Township contends that it has established a grievance procedure with the MWA through the negotiated agreement. It argues that the grievance procedure is the proper forum for its employees to challenge the minor disciplinary actions and not the Merit System Board (Board). Further, the Township contends that the MWA did not provide any information surrounding the fines nor whether the grievance procedures had been followed. It is noted that the Township does not address the information and arguments included in the appellant's June 1, 2004 submission, on which the Township was copied.

In reply, the MWA reiterates its claim that the grievance procedures outlined in the negotiated agreement are not being followed by the Township.

## CONCLUSION

*N.J.S.A.* 11A:2-20 and *N.J.A.C.* 4A:2-2.4(c) provide that an appointing authority may only impose a fine as a form of restitution; in lieu of a suspension, when the appointing authority establishes that a suspension of the employee would be detrimental to the public health, safety or welfare; or where an employee has agreed to a fine as a disciplinary option. *N.J.A.C.* 4A:2-3.1(a) states that minor discipline is a formal written reprimand or a suspension or fine of five working days or less. Further, *N.J.A.C.* 4A:2-3.1(d) provides that in local service an appointing authority may establish procedures for processing minor discipline and grievances.

Initially, the Board notes that it only reviews minor disciplinary actions in local service where an employee is challenging the *form* of the penalty. Otherwise, such matters are *not* under the Board's jurisdiction. Accordingly, as the MWA is essentially challenging the form of the penalty imposed, the Board is reviewing this matter. In this regard, the Board notes that all of the disciplinary matters presented on appeal by the MWA, except for the April 29, 2004 fine, would be considered untimely pursuant to *N.J.A.C.* 4A:2-1.1(b) (appeals must be filed within 20 days after the appellant had notice or should have reasonably known of the decision, situation or action being appealed).

In addition, the Board does not have jurisdiction to enforce or interpret grievance procedures or other items which are contained in a collective bargaining agreement negotiated between the employer and a majority representative. *See In the Matter of Jeffrey Sienkiewicz, Bobby Jenkins and Frank Jackson*, Docket No. A-1980-99T1 (App. Div., May 8, 2001). The proper forum to bring such concerns is the Public Employment Relations Committee. *See N.J.S.A.* 34:13A-5.3 and *N.J.S.A.* 34:13A-5.4(c).

With regard to the April 29, 2004 fine, the Township argues that the fine is a minor disciplinary action which does not fall under the Board's jurisdiction. The Board disagrees. As noted above, under *N.J.S.A.* 11A:2-20 and *N.J.A.C.* 4A:2-2.4, the Board is empowered to review the form of disciplinary action taken against an employee, including fines, regardless of whether the fine is for five days or less. *See In the Matter of Sandra Fraser*, Docket No. A-3886-88T1 (App. Div., April 5, 1990). In this regard, the Board notes that the situations in which fines are imposed are restricted and an appointing authority must make a specific showing to justify the imposition of a fine. In the instant matter, the Township has not shown that Mr. Christiano's attendance is so critical to its operation that a disciplinary suspension could not be imposed, and that anything other than a fine would create the requisite public health, safety or welfare emergency. If a fine were allowed under the present circumstances, there would be the opportunity for abuse since it would result in employees never receiving any other form of discipline. Accordingly, the Board concludes that the imposition of the fine under the above circumstances is

prohibited since the standards set forth in *N.J.S.A. 11A:2-20* and *N.J.A.C. 4A:2-2.4* have not been satisfied. Therefore, the Board reverses the fine and remands the matter back to the Township to determine an appropriate penalty for Mr. Christiano.

## **ORDER**

Therefore, it is ordered that the matter of Anthony Christiano's April 29, 2004 fine of eight hours work without pay be remanded to the Township to determine an appropriate penalty consistent with this decision. Further, the Board orders that all other issues raised in this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.