

NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2938-14T1

CITY OF NEWARK,

Appellant,

v.

NEWARK POLICE SUPERIOR OFFICERS  
ASSOCIATION,

Respondent.

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Argued October 14, 2015 – Decided October 26, 2015

Before Judges Espinosa and Rothstadt.

On appeal from the Public Employment Relations Commission, Docket No. CO-2014-241.

Barbara J. Stanton argued the cause for appellant (Carmagnola & Ritardi, L.L.C., attorneys; Domenick Carmagnola, of counsel and on the briefs; Ms. Stanton, on the briefs).

Darryl M. Saunders argued the cause for respondent Newark Police Superior Officers Association.

Christine R. Lucarelli, Deputy General Counsel, argued the cause for respondent the New Jersey Public Employment Relations Commission (Don Horowitz, Acting General Counsel, attorney; Mr. Horowitz, on the statement in lieu of brief).

PER CURIAM

We granted the City of Newark (City) leave to appeal, pursuant to Rule 2:2-4, from the interlocutory order of the New Jersey Public Employment Relations Commission (PERC) granting interim relief to the Newark Police Superior Officers Association (Association). The Association's application for interim relief sought enforcement of the parties' expired collective negotiations agreement (CNA),<sup>1</sup> based upon the City allegedly unilaterally repudiating the CNA's terms and conditions of employment, in violation of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 to -43. Specifically, the Association claimed that, during negotiations for a new agreement, the City violated the expired CNA by refusing to pay accrued compensation to seventeen of its members upon their retirement from the Newark Police Department. The Association filed an unfair labor practice action and an application seeking interim relief before PERC. PERC ordered the City to make lump sum payments to the retirees, pursuant to the CNA, prior to a final determination of the Association's underlying action.

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<sup>1</sup> The CNA went into effect on January 1, 2009, and expired December 31, 2012. However, the CNA expressly provides it "shall continue in effect during the negotiations between the parties."

The City raises three arguments in support of its appeal. First, the City asserts PERC improperly determined that the Association demonstrated a reasonable probability of success on the merits in its underlying action. The City next contends PERC incorrectly concluded the Association met its burden to show it would suffer irreparable harm in the absence of relief. Third, the City claims PERC erred in finding the Association showed the hardships it faced if denied relief outweighed the hardships imposed on the City and the general public if relief was granted.

In its supplement to the administrative record, filed with leave granted pursuant to Rule 2:5-5(b), and in its counsel's oral argument to us, the City confirmed that it, in fact, paid the lump sum payments to all but one of the retirees whose claims formed the basis for the underlying unfair practice action. The City made the payments once each of the retirees submitted an application for their accrued compensation following separation from their employment. As we understand from the City's supplemental submission and counsel's arguments, the one unpaid retiree will be compensated upon his submission of an application. The City nevertheless pursued leave to appeal because it believes it is entitled, as a matter of law, to have the order granting interim relief vacated, arguing we


should render such a determination on an interlocutory basis. We, however, decline the City's invitation to do so.

Under these circumstances, we conclude "leave to appeal [w]as improvidently granted," as the City never disputed that the Association's members were entitled to the payment of the accrued compensation. State v. Abeskaron, 326 N.J. Super. 110, 122 (App. Div. 1999)(citation omitted)(recognizing "[a]n appellate court may vacate an order granting leave to appeal as improvidently granted"), certif. denied, 163 N.J. 394 (2000); Pressler & Verniero, Current N.J. Court Rules, comment 1 on R. 2:5-6 (2015) (explaining "[t]he appellate court has the authority to vacate an order granting leave to appeal improvidently entered"). We, therefore, no longer discern a justiciable dispute requiring our review. See In re City of Plainfield's Park-Madison Site, 372 N.J. Super. 544, 550 (App. Div. 2004) ("Issues that have been rendered moot by subsequent developments render legal issues abstract and outside the proper realm of courts."), certif. denied, 182 N.J. 630 (2005); Cinque v. N.J. Dep't of Corr., 261 N.J. Super. 242, 243 (App. Div. 1993) ("It is firmly established that controversies which have become moot or academic prior to judicial resolution ordinarily will be dismissed."); see also In re Court Budget & Court Pers. in Essex Cnty., 81 N.J. 494, 497 (1980) (refusing to consider

the merits of a moot appeal, even though the question was of "wide public importance"); Indep. Realty Co. v. Twp. of N. Bergen, 376 N.J. Super. 295, 301-02 (App. Div. 2005) (noting judicial adjudication requires "a controversy between the plaintiff and a defendant, subject to the court's jurisdiction, having an interest in opposing his claim. Simply put, the threshold question is whether the controversy presented is actual and bona fide.") (citations and internal quotation marks omitted).

The appeal is dismissed.

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

  
CLERK OF THE APPELLATE DIVISION