

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0423-15T1

CITY OF NEWARK,

Appellant,

v.

NEWARK POLICE SUPERIOR
OFFICERS' ASSOCIATION,

Respondent.

Argued May 10, 2016 – Decided December 12, 2016

Before Judges Espinosa, Rothstadt and Currier.

On appeal from the New Jersey Public
Employment Relations Commission, Docket No.
CO-2014-157.

Barbara J. Stanton argued the cause for
appellant (Carmagnola & Ritardi, LLC,
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.

Don Horowitz, Senior Deputy General Counsel,
argued the cause for respondent New Jersey
Public Employment Relations Commission (Robin
T. McMahon, General Counsel, attorney; Mr.
Horowitz, on the brief).

The opinion of the court was delivered by

ROTHSTADT, J.A.D.

We granted the City of Newark (City) leave to appeal, R. 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). This appeal is the fifth in a series of similar matters filed by the City. We dismissed one of them in an unpublished opinion after determining that the officers' entitlement to the payments withheld from them was not in dispute. See City of Newark v. Newark Police Superior Officers' Ass'n, No. A-2938-14 (App. Div. Oct. 26, 2015) (slip op. at 3-4) (Newark I).¹ In that case, the City did not challenge the Association's members' entitlement upon retirement to a lump sum payment of certain wages and benefits, which it in fact ultimately paid. Ibid. It only contested PERC's interim determination that it appeared likely that the City committed an unfair labor practice. Id. at 2-3.

The issues raised in the present appeal are similar to those raised in Newark I. In the matter now before us, the Association's application for interim relief sought enforcement of the parties' expired collective negotiations agreement (CNA), based upon the City allegedly unilaterally repudiating the CNA's terms and

¹ We denied leave in City of Newark v. Newark Police Superior Officers' Ass'n, No. AM-0320-14 (App. Div. Oct. 15, 2015); and we dismissed two other appeals filed by the City. See In the Matter of City of Newark, No. A-3904-14 (App. Div. Dec. 7, 2015); In the Matter of City of Newark, No. A-3905-14 (App. Div. Dec. 4, 2015).

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, including longevity pay to one of its members, Lieutenant William Perez, upon his retirement from the Newark Police Department.

The City acknowledges that it did not make the total payment owed to Perez² based upon the procedure followed by the City's Police Director (Director), who sustained the Association's grievance and directed that Perez be paid in full. According to the City, the Director failed to submit his decision in a timely manner, which should have resulted in the denial of the grievance, thereby requiring the matter be submitted to arbitration. In addition, the City contends that the Director failed to seek and obtain its Business Administrator's approval before sustaining the grievance as required by one of the City's policies.

² According to the Association's undisputed allegations, Perez retired on April 1, 2012, and did not receive any payment from the City until nine months later. When he did, it did not include longevity pay in the amount of \$10,341.98. Also, the City failed to make a second payment that was due in January 2013. PERC's interim order directed that the longevity pay deducted from the first payment to Perez be made as well as the amount to be calculated for 2013.

After the City refused to abide by the Director's determination, the Association filed an unfair labor practice action and an application seeking interim relief before PERC. PERC ordered the City to make the lump sum payments owed to Perez prior to a final determination of the Association's underlying action.

In its appeal from PERC's interim award, the City raises essentially the same arguments it raised in Newark I, challenging PERC's determination that the Association met the criteria for an award of interim relief. See Crowe v. De Gioia, 90 N.J. 126, 132-34 (1982). The City also argues "PERC erred by ignoring the City's argument that the [Association] cannot establish success on its claim that [Perez] is entitled to longevity pay on accrued compensatory time," contending this is prohibited by the CNA; and PERC should not have exercised jurisdiction over this matter, asserting that because there was no unfair labor practice committed, only a question as to the "enforceability of provisions in an existing [CNA]; namely, the enforceability of the statute of limitations in the parties' mandated grievance procedure."

The City, therefore, asks us to resolve "the primary issue which [PERC] will be required to decide to reach a final [appealable decision]" - whether the City committed an unfair labor practice by withholding the payment to Perez after it was authorized by the Director. See S.N. Golden Estates, Inc. v.

Cont'l Cas. Co., 317 N.J. Super. 82, 89 (App. Div. 1998). Considering that "[i]nterlocutory review . . . is to be exercised only sparingly, because of the strong policy that favors an uninterrupted proceeding at the trial level with a single and complete review," Grow Co. v. Chokshi, 403 N.J. Super. 443, 461 (App. Div. 2008) (internal quotation marks and citations omitted); see also State v. Reldan, 100 N.J. 187, 205 (1985), we are again constrained to dismiss the City's appeal as we conclude leave was improvidently granted. See 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); see also S.N. Golden Estates, Inc., supra, 317 N.J. Super. at 89. "[W]e are convinced upon further reflection that interlocutory appellate review of [PERC's interim order] would not be appropriate," because our review would simply be "premature [as we are asked] to consider" issues that are "as yet unresolved [below]." Ibid.

The appeal is dismissed.³

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


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³ We are not persuaded by the City's jurisdiction argument that a different result is warranted. We find the argument circular and without any legal basis as it rests upon a finding that an unfair labor practice was not committed, which begs the ultimate determination to be made by PERC.