

P.E.R.C. NO. 2004-21

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PASSAIC,

Respondent,

-and-

Docket No. CO-2003-193

PBA LOCAL 14,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies the City of Passaic's motion for reconsideration of I.R. No. 2004-2. In that decision, a Commission designee granted a request for interim relief accompanying an unfair practice charge filed by P.B.A. Local 14. The designee ordered the City to restore a prior work schedule pending good faith negotiations with the PBA or until the Commission orders or the parties agree otherwise. The Commission finds no extraordinary circumstances to warrant reconsideration of the designee's decision.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, Scarinci & Hollenbeck, LLC,
attorneys (Sean D. Dias, of counsel)

For the Charging Party, Loccke & Correia P.A.,
attorneys (Michael A. Bukosky, of counsel)

DECISION

On August 11, 2003, after an extension of time, the City of Passaic moved for reconsideration of I.R. No. 2004-2, 29 NJPER 310 (196 2003). In that decision, a Commission designee granted a request for interim relief accompanying an unfair practice charge filed by PBA Local 14. The designee ordered the City to restore a prior work schedule pending good faith negotiations with the PBA or until the Commission orders or the parties agree otherwise.^{1/}

^{1/} The Commission Chair denied the City's request for a stay pending consideration of this motion. On the PBA's motion, the Superior Court has enforced the interim relief order.

The City argues that the designee improperly concluded that there was irreparable harm justifying interim relief and that the motive for the schedule change was economic.

The PBA opposes reconsideration. It argues that changes in terms and conditions of employment during interest arbitration proceedings constitute irreparable harm per se; its president's affidavit asserted that there would be significant irreparable damage to individual PBA members if the work schedule was not restored; and it provided overwhelming evidence to show that the motivation for the schedule change was economic.

Reconsideration will be granted only in extraordinary circumstances not present here. N.J.A.C. 19:14-8.4. Unilateral changes in mandatorily negotiable terms and conditions of employment during the collective negotiations process will almost always be found to irreparably harm that process. Unilateral changes, even during the ratification process, can shift the balance of power in the collective negotiations process. Such changes are unlawful and, where appropriate, will be rescinded if the standards for obtaining interim relief have been met.

Borough of Closter, P.E.R.C. No. 2001-75, 27 NJPER 289 (¶32104 2001). Accordingly, the absence of affidavits from individual police officers claiming particularized harm does not constitute an extraordinary circumstance warranting reconsideration of this interim relief decision. Neither does the designee's

characterization of the City's motivation as economic. Absent a showing that an employer acted pursuant to a managerial prerogative, the fact that a unilateral change may have been partly rather than wholly motivated by economic concerns will not defeat a request for interim relief.

ORDER

The motion for reconsideration is denied.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, DiNardo, Katz, Ricci and Sandman voted in favor of this decision. None opposed. Commissioner Mastriani was not present.

DATED: October 30, 2003
Trenton, New Jersey
ISSUED: October 30, 2003