

P.E.R.C. NO. 2004-50

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 request of PBA Local 14 for reconsideration of I.R. No. 2004-7. In that case, a Commission designee found that the PBA did not meet its burden to establish that it has a substantial likelihood of success on the merits of its unfair practice claims that the City unilaterally changed mandatorily negotiable shift bidding procedures. The Commission holds that it is not its role to second-guess the designee's determination through a motion for reconsideration. If interim relief is denied, any appeal is to the Superior Court by way of motion for leave to appeal. R. 2:2-4.

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

PBA Local 14 has requested that the full Commission reconsider an interim relief decision of a Commission designee. See I.R. No. 2004-7, 30 NJPER 5 (¶2 2004). The City of Passaic opposes reconsideration. We deny the PBA's request. N.J.A.C. 19:14-8.4.

A Commission designee acts on behalf of the full Commission. N.J.A.C. 19:10-4.1. An interim relief order is an interlocutory decision of the Commission issued to prevent irreparable harm to a charging party during the pendency of unfair practice litigation in which the charging party has a substantial likelihood of success when a final decision is issued. N.J.A.C.

19:14-9.1. If interim relief is granted, enforcement of an interim relief order is in the Superior Court. R. 4:67-6. If interim relief is denied, any appeal is to the Superior Court by way of a motion for leave to appeal. R. 2:2-4.

In rare circumstances, a designee might have misunderstood the facts presented or a party's argument. That situation might warrant the designee's granting a motion for reconsideration of his or her own decision. However, only in cases of exceptional importance will we intrude into the regular interim relief process by granting a motion for reconsideration by the full Commission. A designee's interim relief decision should rarely be a springboard for continued interim relief litigation.

To prevail in the interim relief proceeding, the PBA had the burden to establish that it has a substantial likelihood of succeeding on the merits of its unfair practice claims. In response to the PBA's claim that the City unilaterally changed mandatorily negotiable shift bidding procedures, the City asserted that shift bidding by strict seniority would have interfered with its managerial prerogative to ensure that there was sufficient staffing on each shift to address public safety concerns within the City. A certification from its deputy chief supported the City's assertion. The designee found that there was sufficient evidence of a managerial prerogative to prevent the PBA from meeting its burden. It is not the role of the full

Commission to second-guess that determination through a motion for reconsideration.

ORDER

Reconsideration is denied.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read 'L Henderson', is written over a horizontal line.

Lawrence Henderson  
Chairman

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

DATED: February 26, 2004  
Trenton, New Jersey  
ISSUED: February 27, 2004