

P.E.R.C. NO. 2006-41

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF LITTLE FALLS,

Respondent,

-and-

Docket No. CO-2006-098

LITTLE FALLS POLICE BENEVOLENT  
ASSOCIATION, LOCAL 346,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies the Township of Little Falls' motion for reconsideration of I.R. No. 2006-9. In that decision, a Commission designee granted a request for interim relief filed by the Little Falls Police Benevolent Association, Local 346 and restrained the Township from implementing a new work schedule. The designee found that the timing of the Mayor's decision to change the schedule shortly after grievances were filed was suspicious and raised an inference of hostility, particularly since the decision was made over the police chief's strenuous opposition. The Commission denies reconsideration concluding that this case does not warrant intrusion into the regular interim relief process. The effect of the designee's decision is to preserve the status quo, i.e., a work schedule that has been in place for over 20 years, until the completion of the unfair practice proceedings. The Township has not asserted any harm to it or the public interest in temporarily maintaining the status quo.

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, Laufer, Knapp, Torzewski & Dalena,  
attorneys (Fredric M. Knapp, of counsel and on the  
brief; James T. Prusinowski, on the brief)

For the Charging Party, Fox and Fox LLP, attorneys  
(Lynsey A. Johnson, on the brief)

DECISION

On November 14, 2005, the Township of Little Falls moved for reconsideration of I.R. No. 2006-9, 31 NJPER 333 (¶134 2005). In that decision, a Commission designee granted a request for interim relief filed by the Little Falls Police Benevolent Association, Local 346 and restrained the Township from implementing a new work schedule. She found that the timing of the Mayor's decision to change the schedule shortly after grievances were filed was suspicious and raised an inference of hostility, particularly since the decision was made over the police chief's strenuous opposition. On November 21, the PBA filed a brief opposing reconsideration.

A Commission designee acts on behalf of the full Commission. N.J.A.C. 19:10-4.1. In City of Passaic, P.E.R.C. No. 2004-50, 30 NJPER 67 (¶21 2004), we explained that we will grant reconsideration of a designee's interim relief decision only in cases of exceptional importance:

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. [Ibid.]

The Township argues that reconsideration is warranted because the designee disregarded issues of fact and made unsupported conclusions. It contends that it had a contractual right to change the work schedule after 30 days notice; there was no showing that the change was affected by the PBA's filing grievances; the designee impermissibly placed the burden on the Township to show that it was not retaliating against the PBA for filing grievances; discussion of the work schedule change began several months before the grievances were filed; the designee improperly relied on a hearsay statement that the chief told the PBA's president that the change was a result of the grievance being filed; there is a factual dispute as to the Township's motivation; and the Township has addressed the chief's concerns

about public safety. The Township argues that interim relief should have been denied because there was no competent evidence to show that the Township's motivation was retaliatory; the designee could only say that she suspected that retaliation may have been the motivation. As for the facts, the Township contends that the designee erroneously determined that it did not respond to the chief's concerns about the schedule change and that it was not willing to postpone the schedule implementation. The Township argues that only through the testimony of all the parties and witnesses can it be determined whether it engaged in retaliatory conduct.

The PBA responds that the designee properly required it to show that it had a substantial likelihood of succeeding on the merits of its charge. It supports the designee's determination that it engaged in protected activity by filing two grievances; the Township knew of that activity; and the Township was hostile toward that activity as evidenced by the timing of the Mayor's decision to change a work schedule that had been "highly productive" for at least 20 years.

Although this case is important to the parties, it is not a case of exceptional importance warranting our intrusion into the regular interim relief process. Passaic; Burlington Cty., P.E.R.C. No. 2004-59, 30 NJPER 102 (¶39 2004). The effect of the designee's decision is to preserve the status quo, i.e. to delay

a change from a work schedule that has been in place for over 20 years, until the completion of the unfair practice proceedings. The designee acted only after finding that the timing of the decision lent itself to a finding of retaliation, PBA members would be irreparably harmed by the schedule change, and the Township had not asserted any harm to it or the public interest in temporarily maintaining the status quo. Under these circumstances, we deny the motion for reconsideration.

ORDER

The motion for reconsideration is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: December 15, 2005

Trenton, New Jersey