

P.E.R.C. NO. 2007-43

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Respondent,

-and-

Docket No. CO-2006-172

JERSEY CITY PSOA,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission grants a motion for summary judgment filed by the City of Jersey City on an unfair practice charge filed by the Jersey City PSOA. The charge alleges that the City violated the New Jersey Employer-Employee Relations Act when it unilaterally changed the work assignments of police sergeants and lieutenants and refused to engage in impact negotiations. The Commission grants summary judgment given that it has already held in a prior decision that the City had a managerial prerogative to make the changes and the absence of any proffered facts to support the PSOA's assertion that the reorganization was for economic reasons. See P.E.R.C. No. 2007-7, 32 NJPER 278 (¶115 2006); recon. granted P.E.R.C. No. 2007-26, 32 NJPER 356 (¶149 2006).

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, Schwartz Simon Edelstein Celso & Kessler, attorneys (Stefani Schwartz, of counsel; Rachel A. Davis and Mark H. Aronowitz, on the brief; Rachel A. Davis, on the reply brief)

For the Charging Party, Lockke & Correia PA, attorneys (Michael A. Bukosky, of counsel and on the briefs)

DECISION

The Jersey City PSOA asserts that the City of Jersey City violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4a, when it unilaterally changed the work assignments of police sergeants and lieutenants and refused to engage in impact negotiations. The City seeks summary judgment, asserting that in a prior scope of negotiations decision, we have already held that the City had a managerial prerogative to reorganize its police department to improve supervision and to make these changes. See P.E.R.C. No. 2007-7, 32 NJPER 278 (¶115 2006); recon. granted P.E.R.C. No. 2007-26, 32 NJPER 356 (¶149 2006). The PSOA opposes summary judgment, asserting that the reorganization was for

economic reasons and that our prior decision did not resolve that question. The motion has been referred to the Commission for disposition. N.J.A.C. 19:14-4.8. Given our prior decision and absent any proffered facts to support the PSOA's assertion that the reorganization was for economic reasons, we grant summary judgment and dismiss the charge.

The PSOA filed its charge on January 5, 2006. On May 25, a Complaint and Notice of Hearing issued on alleged violations of 5.4a(1) and (5).^{1/} Also on May 25, the City filed a scope of negotiations petition seeking a restraint of binding arbitration of grievances concerning the assignment and out-of-title pay issues arising out of the reassignment of lieutenants, captains and sergeants. We found that the City had determined that there were too many supervisors on the day tour and too few supervisors on the evening and midnight tours. Lieutenants on the day tour were performing duties that could have been completed by sergeants. In particular, lieutenants were performing desk

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative." Insufficient facts were alleged to support a Complaint on alleged violations of 5.4a(2), (3), (4), (6) and (7).

officer duties that the New Jersey Department of Personnel has confirmed are sergeant duties. We concluded that the City had a non-negotiable managerial prerogative to reassign sergeants to desk officer positions and to reassign lieutenants to other duties.

Summary judgment will be granted if there are no material facts in dispute and the movant is entitled to relief as a matter of law. N.J.A.C. 19:14-4.8(d); Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995).

The City argues that the doctrines of res judicata and collateral estoppel bar the PSOA from challenging the reorganization and that it had a managerial prerogative to redeploy its police supervisors to achieve greater responsibility, accountability and supervision, and enhance operational knowledge of the department. Its motion relies on the certification of its police chief that was submitted in support of its scope petition and formed the basis for our finding that the City had a managerial prerogative to reorganize.

The PSOA opposes summary judgment. It argues that the City has never articulated a legitimate reason why it reallocated work assignments or changed officers' schedules, and that the reorganization was designed to save money. The PSOA contends that the res judicata and collateral estoppel claims are moot because we reversed our scope decision on reconsideration. It

also "disputes all of the factual assertions made by the employer as justifying the reorganization" and asserts that the primary motivation was financial. The PSOA's president certifies that the facts in the PSOA's brief are true to the best of his knowledge.

We grant summary judgment and dismiss the Complaint. We have already found that the City had a managerial prerogative to make the disputed changes. P.E.R.C. No. 2007-7. Our decision on reconsideration did not reverse that aspect of our ruling. P.E.R.C. No. 2007-26. Although its brief asserts that the City reorganized for economic reasons, the PSOA has not specified any facts supporting that assertion. Under these circumstances, there are no material facts in dispute and the City is entitled to relief as a matter of law.

ORDER

Summary judgment is granted. The Complaint is dismissed.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, Fuller and Watkins voted in favor of this decision. None opposed. Commissioner DiNardo recused himself.

ISSUED: January 25, 2007

Trenton, New Jersey