

P.E.R.C. NO. 2007-54

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.

Appearances:

For the Respondent, Schwartz Simon Edelstein Celso & Kessler, attorneys (Stefani Schwartz, on the brief)

For the Charging Party, Loccke & Correia PA, attorneys (Michael A. Bukosky, on the brief)

DECISION

_____The Jersey City PSOA has moved for reconsideration of our decision in P.E.R.C. No. 2007-43, 33 NJPER 4 (¶4 2007). In that decision, we granted summary judgment and dismissed an unfair practice charge filed by the PSOA alleging that the City of Jersey 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. No extraordinary circumstances warrant reconsidering our decision. N.J.A.C. 19:14-8.4.

The City asked that we grant summary judgment in this unfair practice case based on our finding in a prior scope of negotiations case that it had a managerial prerogative to

reorganize its police department. We granted summary judgment, but not by a mechanical application of the doctrines of res judicata or collateral estoppel. We did not rule that because the issue had been decided in the prior scope case, the PSOA could not challenge the assertion of a managerial prerogative in the unfair practice case. We granted summary judgment because the City's motion presented evidence that it reorganized its police department for managerial reasons and the PSOA's response simply disagreed with the City's facts and was not supported by any certifications specifying facts to show that the City reorganized for other reasons. See R. 4:46-5 (court rule requires that party opposing motion for summary judgment cannot rest on mere allegations but must respond by setting forth facts showing that there is a genuine issue for trial).

The PSOA now alleges a factual dispute by referring to portions of the statement of facts in its brief opposing the scope of negotiations petition. However, those facts go to the issue of whether there was an agreement to pay sergeants performing desk duty at the lieutenants' rate of pay, an issue we permitted the PSOA to arbitrate in our scope of negotiations case. Those facts do not contradict the City's reasons for instituting the reorganization or specify any severable impact issues over which the City refused a request to negotiate.

ORDER

Reconsideration is denied.

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: March 29, 2007

Trenton, New Jersey