

P.E.R.C. NO. 2008-53

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Respondent,

-and-

Docket No. CO-2007-105

NEWARK POLICE SUPERIOR  
OFFICERS' ASSOCIATION

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies the City of Newark's motion for reconsideration and clarification of P.E.R.C. No. 2008-034. In that decision, the Commission granted the Newark Police Superior Officers' Association's motion for summary judgment on an unfair practice charge it filed against the City. The charge alleged that the City violated the New Jersey Employer-Employee Relations Act when it repudiated a settlement agreement resolving a vacation grievance. The Commission denied the City's cross-motion on that charge and held that the City could not unilaterally rescind a grievance settlement reached by its police director under the negotiated grievance procedure. Such rescission repudiates the grievance procedure and violates the Act. The Commission holds that there are no extraordinary circumstances warranting reconsideration. The City is bound by the police director's decision. Any ongoing disagreement over what the settlement agreement says can be resolved through the parties' negotiated grievance procedure. The City also objected to the language of the Notice to Employees ordered to be posted arguing that the notice should be directed at SOA members only, not all City employees. Absent objection from the SOA, the Commission grants the City's request and limits the posting to the police department.

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, LLC, attorneys (Stefani C. Schwartz, of counsel and on the brief; Joshua I. Savitz, on the brief)

For the Charging Party, Markowitz & Richman, attorneys (Stephen C. Richman and Matthew D. Areman, of counsel and on the brief)

DECISION

On January 4, 2008, the City of Newark moved for reconsideration and clarification of P.E.R.C. No. 2008-34, 33 NJPER 316 (¶120 2007). In that decision, we granted the Newark Police Superior Officers' Association's motion for summary judgment on an unfair practice charge it filed against the City. The charge alleged that the City violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it repudiated a settlement agreement resolving a vacation grievance. We denied the City's cross-motion on that charge. We

held that the City could not unilaterally rescind a grievance settlement reached by its police director under the negotiated grievance procedure. Such rescission repudiates the grievance procedure and violates section 5.4a(5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. We also denied cross-motions for summary judgment on two other unfair practice charges filed by the SOA alleging that the City repudiated side agreements reached with the SOA concerning the terms and conditions of employment of new scuba and helicopter units. We found that neither party had presented evidence of their negotiations history as it relates to side agreements and other settlements and that a more complete record is required.

A motion for reconsideration will not be granted absent extraordinary circumstances. N.J.A.C. 19:14-8.4. We deny the City's motion.

The City contends that we did not appreciate the significance of the parties' dispute over the interpretation of the vacation grievance settlement agreement that we required the City to honor. In the alternative, the City asks that we rule that its interpretation of the agreement is accurate so that it can proceed and implement it. Finally, the City objects to the language of the Notice to Employees that we ordered it to post. It contends that the notice should be directed at SOA members, not all City employees.

The SOA responds that the City has not shown the extraordinary circumstances required for reconsideration. It contends that the issue in the motion for summary judgment was whether the police director had the authority to enter into the grievance settlement agreement. It asserts that the City is using a motion for reconsideration to improperly raise a new, unfounded argument. Finally, the SOA contends that the City's motion seeks a contract interpretation and ruling outside our jurisdiction.

We first retrace this case's procedural history. The SOA filed three unfair practice charges. This one involving a vacation grievance settlement, and two others involving side agreements detailing the terms and conditions of employment for the police scuba and helicopter units. The Director of Unfair Practices consolidated the three charges for hearing.

The SOA filed a motion for summary judgment on all three charges supported by a brief, exhibits and affidavits. The City then filed a cross-motion for summary judgment supported by a brief opposing the SOA's motion and in support of its cross-motion and it simultaneously filed a motion to sever the vacation charge from the scuba and helicopter charges. The City's two motions were supported by a certification and exhibits.

We denied the motions concerning the scuba and helicopter side agreements. Those charges require a more complete record

detailing the authority of the police director to enter into side agreements.

In its brief in opposition to the SOA's motion for summary judgment and in support of its cross-motion for summary judgment, the City asserted that there were no material disputed facts, and it argued that the police director did not have the authority to enter into the grievance settlement agreement and therefore that agreement was not binding on the City. We rejected that argument and found that the City could not unilaterally rescind a grievance settlement reached by its police director under the negotiated grievance procedure. We therefore granted the SOA's motion for summary judgment on that charge and denied the City's cross-motion.

Because we granted summary judgment on the vacation grievance settlement charge and denied summary judgment on the scuba and helicopter charges, we noted that the City's motion to sever was moot. The cases were effectively severed because one was over and the other two were proceeding to a hearing.

In its reply brief in support of the instant motion for reconsideration, the City argues that the certification in support of both its cross-motion for summary judgment and its motion to sever declared that the parties had a dispute over the interpretation of the vacation grievance settlement agreement and that it is therefore not raising that argument for the first time

in the instant motion. However, the only place the City argued that the parties disagreed about the interpretation of the vacation grievance settlement was in its brief in support of its motion to sever.<sup>1/</sup> In its brief on the motion and cross-motion for summary judgment, the City did not argue that the parties disagreed about the meaning of the settlement. It instead argued that the police director did not have the authority to enter into the agreement. We rejected that argument and granted the SOA's motion for summary judgment.

There are thus no extraordinary circumstances warranting our considering the City's new argument. It is bound by the police director's decision. If there is an ongoing disagreement over what that decision says, the parties may use their negotiated grievance procedure to resolve it.

Finally, absent objection from the SOA, we grant the City's request that the posting be limited to the police department.

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<sup>1/</sup> The City's attorney's certification in support of its cross-motion for summary judgment and its motion to sever asserted that there was a dispute over the interpretation of the vacation grievance settlement agreement. However, that assertion was not raised in the City's legal argument in opposition to the SOA's motion for summary judgment or in support of its cross-motion for summary judgment.

ORDER

The City's motion for reconsideration and clarification is denied except to the extent necessary to grant the City's request that the posting be limited to the police department.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan, Fuller, Joanis and Watkins voted in favor of this decision. None opposed.

ISSUED: March 27, 2008

Trenton, New Jersey