

P.E.R.C. NO. 2008-61

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH HUDSON REGIONAL  
FIRE AND RESCUE,

Respondent,

-and-

Docket No. CO-2008-242

NORTH HUDSON FIRE OFFICERS'  
ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies a motion for reconsideration of I.R. No. 2008-7 filed by the North Hudson Fire Officers' Association. In that decision, the Commission designee denied a request for interim relief submitted by the Association in conjunction with the unfair practice charge it filed against the North Hudson Regional Fire and Rescue. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act when it denied light or modified duty to a fire captain contrary to an existing policy and when it unilaterally changed the policy. The designee found a dispute over material facts based on the certifications filed in support of and opposition to the application for interim relief. The Commission finds no basis to overturn that finding.

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, David F. Corrigan, attorney

For the Charging Party, Loccke, Correia, Schlager,  
Limsky & Bukosky (Michael A. Bukosky, of counsel)

DECISION

On March 14, 2008, the North Hudson Fire Officers' Association moved for reconsideration of I.R. No. 2008-7, 34 NJPER 55 (¶19 2008). In that decision, a Commission designee denied a request for interim relief submitted by the Association in conjunction with the unfair practice charge it filed against the North Hudson Regional Fire and Rescue. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1), (2), (3), (4), (5), (6) and (7),<sup>1/</sup> when it denied light or

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<sup>1/</sup> These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with,  
(continued...)"

modified duty to a fire captain contrary to an existing policy and when it unilaterally changed the policy.

In the interim relief proceedings before the Commission designee, the Association submitted a certification of its president, which asserted that in the past, the employer's modified duty policy was made available to employees in situations similar to the fire captain. No names or dates were specified. The employer submitted a certification of its executive director of administration, which asserted that it has been the practice of the Regional to only grant modified duty within one year of the date of injury and if a recovery to full firefighting duties will occur within that one year period. The designee found that there was a factual dispute over whether the

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1/ (...continued)  
restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act; (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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; (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement; (7) Violating any of the rules and regulations established by the commission."

existing policy provides that modified duty will be granted only if the request is made within one year of the date of injury and if firefighting duties can be resumed within that year, or if those are newly imposed conditions by the employer. Accordingly, she stated that the factual dispute could only be resolved through the conduct of a plenary hearing or through the parties' grievance procedure. She therefore denied interim relief because the Association had not shown at that stage of the proceedings that it had a substantial likelihood of success on the merits of its charge.

The Association calls unreasonable and untenable the employer's assertion that the alleged changes to the policy are long-standing past practices. The employer has filed a letter brief opposing reconsideration.<sup>2/</sup> It states that even if the one-year limitation did not apply here, the fire captain would have been denied modified duty because none was available at the time of his request.

From our earliest interim relief cases, our designees have recognized the extraordinary nature of the remedy sought. In denying interim relief in Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975), our designee stated:

In reaching this conclusion, the undersigned  
is most cognizant of and sensitive to the

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<sup>2/</sup> We disregard the employer's supplemental letter and exhibit as it was filed without leave. See N.J.A.C. 19:14-8.4.

extraordinary nature of the remedy sought to be invoked and the limited circumstances under which its invocation is necessary and appropriate. The Commission's exclusive remedial powers, normally intended to be exercised subsequent to a plenary hearing, will not be called into play for interim relief in advance of such hearing except in the most clear and compelling circumstances.

A Commission designee acts on behalf of the full Commission. N.J.A.C. 19:10-4.1. An interim relief order is a decision issued during unfair practice litigation after a charging party has shown that it has a substantial likelihood of success when a final decision is issued at the end of the case. N.J.A.C. 19:14-9.1. 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. N.J.A.C. 19:14-8.4; City of Passaic, P.E.R.C. No. 2004-50, 30 NJPER 67 (¶21 2004).

Here, the designee found a dispute over material facts based on the certifications filed in support of and in opposition to the application for interim relief. The charging party has submitted a certification stating that modified duty was made available to employees in situations similar to the fire captain who was denied modified duty in this case. The employer has submitted a certification stating that similarly situated employees have not been granted modified duty. Both

certifications speak in generalities. Neither provides names, dates or other specifics of employees granted or denied modified duty in the past. We thus have no basis to overturn the designee's finding that material facts are disputed and no evidence upon which to accept the Association's characterization of the employer's factual assertions as "preposterous." Where there is a dispute over material facts, interim relief is properly denied because the charging party will not have met its burden of showing that it has a substantial likelihood of success on the merits of its charge. Union Cty., P.E.R.C. No. 2003-46, 29 NJPER 15 (¶3 2002). We therefore deny reconsideration by the full Commission. The case will now continue to be processed in the normal course and to a forum where evidence can be presented and the factual dispute can be resolved.

ORDER

The motion for reconsideration is denied.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Fuller, Joanis and Watkins voted in favor of this decision. None opposed. Commissioner Branigan recused herself. Commissioner Buchanan was not present.

ISSUED: May 29, 2008

Trenton, New Jersey