P.E.R.C. NO. 2010-52

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MORRIS COUNTY SHERIFF'S OFFICE and
COUNTY OF MORRIS,

Respondents,

-and- Docket No. CO-2009-118

MORRIS COUNTY POLICEMEN'S BENEVOLENT
ASSOCIATION, LOCAL 298,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies a motion for reconsideration of P.E.R.C. No. 2010-16 filed by the Morris County Sheriff's Office and the County of Morris. In that decision, the Commission granted, in part, the Morris County Policemen's Benevolent Association, Local 298's cross-motion for summary judgment on an unfair practice charge it filed against the public employer. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it issued a directive providing that staff who are assigned to positions normally closed on weekends will no longer be permitted to work those positions on a holiday. The Commission finds that the employer has not advanced any argument that meets the extraordinary circumstances needed to warrant reconsideration of its original decision.

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 Respondents, Daniel O'Mullan, Morris County Counsel; Knapp, Trimboli & Prusinowski, LLC, attorneys (Stephen E. Trimboli, Special County Counsel, on the brief)

For the Charging Party, Lindabury, McCormick, Estabrook & Cooper, P.C., attorneys (Donald B. Ross, Jr., on the brief)

DECISION

On October 9, 2009, the Morris County Sheriff's Office and the County of Morris moved for reconsideration of P.E.R.C. No. 2010-16, 35 NJPER 348 (¶117 2009). In that decision, we granted, in part, Morris County Policemen's Benevolent Association, Local 298's cross-motion for summary judgment on an unfair practice charge it filed against the public employer. The charge alleged that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it issued a directive providing that staff who are assigned to positions

normally closed on weekends will no longer be permitted to work those positions on a holiday. We also denied the employer's cross-motion for summary judgment.

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

The motion for reconsideration argues that we should not have granted summary judgment and should have permitted this matter to proceed to hearing because there are material factual issues in dispute. Summary judgment will be granted only if no material facts are 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 employer argues that we should have permitted this matter to proceed to hearing because the evidence gives rise to a genuine issue of fact as to whether the directive predominately concerns non-negotiable minimum staffing issues. There are, however, no extraordinary circumstances warranting reconsideration of this issue because minimum staffing concerns are not implicated. No facts suggest that the employer is being compelled to dip below minimum staffing levels. As we stated in our initial decision, this case does not implicate any policy considerations that would hamper the delivery of services in the jail facility. See Clinton Tp., P.E.R.C. No. 2000-3, 25 NJPER

365 (¶30157 1999), recon. granted P.E.R.C. No. 2000-37, 26 NJPER 15 (¶31002 1999) (while gaps in coverage significantly interfere with a public employer's ability to provide police protection, proposal that would result in overstaffing did not implicate the same concerns and was not per se non-negotiable).

The employer further argues that we should have permitted this matter to proceed to hearing because the record gives rise to a genuine issue of fact as to whether the employer may successfully assert a defense under State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), and that we did not address that defense. However, our review of the employer's brief in opposition to the charging party's motion for summary judgment does not indicate any reference to a defense being argued under Human Services. We will not consider an argument made for the first time in a motion for reconsideration.

The employer states that it asserted a Human Services defense in its Answer. However, its Answer was not submitted as part of the motion and cross-motion for summary judgment. In any event, Human Services is inapplicable because the charging party alleged a repudiation of the contract. Such allegations are not dismissed under the Human Services doctrine. Human Services cautions against permitting litigation of mere breach of contract claims in the guise of unfair practice charges. That case concerned two alleged breaches of the parties' collective

negotiations agreement. We concluded that allegations setting forth at most a mere breach of contract do not warrant the exercise of our unfair practice jurisdiction. This holding does not mean, however, that a breach of contract is never evidence of an unfair practice or that we do not have the power to interpret collective negotiations agreements. In some cases, a breach of contract may also rise to the level of a refusal to negotiate in good faith. If the contract claim is sufficiently related to specific allegations that an employer has violated its obligation to negotiate in good faith, we would certainly have the authority to remedy that violation under subsection (a)(5). For example, a specific claim that an employer has repudiated an established term and condition of employment may be litigated in an unfair practice proceeding pursuant to subsection 5.4(a)(5). Or, as in this case, a charging party may claim that the employer unilaterally changed a past practice during the interest arbitration process in violation of N.J.S.A. 34:13A-21.

The charging party sought summary judgment on two grounds. The first was that the employer repudiated the contract. We denied summary judgment for the charging party on that ground because the parties' contract does not clearly prohibit the employer from requiring employees to take off on a scheduled holiday. However, we granted summary judgment for the charging party because the employer indisputably changed the practice of

staff members who are assigned to positions that are normally closed on the weekend being permitted to work those positions on a holiday. We held that this change during interest arbitration proceedings contravenes the employer's obligation to maintain terms and conditions of employment during those proceedings.

Under all these circumstances, the employer's motion for reconsideration is denied.

ORDER

The motion for reconsideration is denied.

BY ORDER OF THE COMMISSION

Commissioners Eaton, Fuller, Krengel, Voos and Watkins voted in favor of this decision. None opposed. Commissioner Colligan recused himself.

ISSUED: February 25, 2010

Trenton, New Jersey