

P.E.R.C. NO. 2013-31

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF HUDSON,

Public Employer,

-and-

Docket No. RO-2012-009

HUDSON COUNTY UNION,
LOCAL 1 AMALGAMATED,

Petitioner,

-and-

INTERNATIONAL UNION OF PAINTERS AND
ALLIED TRADES, DISTRICT COUNCIL 711,
LOCAL 1007,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission denies Hudson County Union, Local 1 Amalgamated's motion for reconsideration of P.E.R.C. No. 2013-18, ___ NJPER ___ (¶ ___ 2012). In that decision, the Commission reversed and remanded D.R. No. 2012-8, 38 NJPER 267 (¶91 2012). The Commission holds that the motion was not filed by counsel of record and no extraordinary circumstances warrant reconsideration.

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 County of Hudson, Louis C. Rosen, Esq., Deputy
County Counsel

For the Petitioner, Cresci Law LLC, attorneys (Peter J.
Cresci, of counsel)

For the Intervenor, Spear Wilderman, P.C., attorneys
(Martin W. Milz, of counsel and on the brief)

DECISION

On October 9, 2012, Hudson County Union Local 1, Amalgamated
moved for reconsideration of P.E.R.C. No 2013-18, ___ NJPER ___
(¶__ 2012), in which we reversed and remanded a decision of the
Director of Representation that had certified Local 1 as the
exclusive negotiations representative for a negotiations unit of

approximately six painters employed by Hudson County after a mail ballot election.

N.J.A.C. 19:11-9.3 in material part states:

"After a Commission decision has been issued, a party may move for reconsideration. The movant shall specify the extraordinary circumstances warranting reconsideration and the pages of the record it relies on. Any motion pursuant to this section shall be filed within 15 days of service of the Commission decision, together with a proof of service of a copy on all parties. Any party opposing reconsideration may file a response within five days of service on it of the motion, together with a proof of service on all other parties."

The letter motion filed by facsimile with the Commission did not contain a formal proof of service, as defined by R.1:5-3 in accordance with our Rules. We will relax our rule and accept the "cc" noted at the bottom of Local 1's letter as proof of service. Neither the public employer nor the intervenor filed a response to the motion within the five days. Thus, we consider the motion unopposed, as was the original request for review.

A motion for reconsideration will not be granted absent extraordinary circumstances. N.J.A.C. 19:11-9.3, Wall Township Board of Education and Wall Township Information Technology Association, P.E.R.C. No. 2010-63, 36 NJPER 52 (¶24 2010), aff'd 37 NJPER 61 (¶23 2011); City of Newark and Newark Police Superior Officers Association, P.E.R.C. No. 2008-53, 34 NJPER 71 (¶29 2008).

The extraordinary basis for the motion, as set forth in Local 1's letter is the allegation that it did not respond to the intervenor's request for review in January because "We at Hudson County Union Local 1 Amalgamated never received a copy of said request for review filed by IUPAT, thus duly denying us a fair opportunity to oppose said petition in a timely manner (sic)." This statement, as noted above appears in the letter motion submitted to the Commission by Local 1, and was signed by Wyatt Kraft, as President of Local 1. The assertion was unaccompanied by an affidavit or certification from any person regarding the alleged non service of the request for review.

Additionally, when on January 9, 2012 the IUPAT filed the request for review of the Director of Representation decision, as required by N.J.A.C. 19:11-8.1(b), the request for review papers were accompanied by a "Certificate of Service" executed by Martin W. Milz, Esq., counsel for IUPAT, indicating the papers had been served via e-mail and first class mail upon Peter J. Cresci, Esq., who was then the counsel for Local 1, and as well upon Louis C. Rosen, Esq., who was counsel to Hudson County in this matter.

The motion for reconsideration now before us must be denied. Firstly, it was filed by Local 1 and signed not by its counsel of record, Mr. Cresci, but instead by Mr. Wyatt Kraft, its President. No substitution of counsel, nor any withdrawal of

counsel has been provided to the Commission. More importantly, the only basis claimed for the extraordinary circumstances warranting reconsideration pursuant to N.J.A.C. 19:11-9.3 is the claim that the original request for review was "never received" by Local 1. Since the certification of service provided to the Commission certified that the papers had been served upon Attorney Cresci, the fact even if true, that the union itself, or its President had not been served is of no consequence. Service upon counsel constitutes service upon the client. Further, there is no certification nor affidavit provided by Local 1 regarding the allegations concerning lack of service.

For all the reasons set forth above the motion for reconsideration is denied.

ORDER

The motion for reconsideration is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones, Voos and Wall voted in favor of this decision. None opposed.

ISSUED: October 25, 2012

Trenton, New Jersey