

P.E.R.C. NO. 2014-2

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH HUDSON REGIONAL FIRE & RESCUE,

Respondent,

-and-

Docket No. CO-2011-153

NORTH HUDSON FIREFIGHTERS ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies a motion for reconsideration of P.E.R.C. No. 2013-83 filed by the North Hudson Regional Fire & Rescue. In that decision, the Commission granted the North Hudson Firefighters Association's motion for summary judgment in an unfair practice case 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 unilaterally terminated the practice of paying terminal leave in one payment. 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 Respondent, Scarinci & Hollenbeck, LLC
(Ramon E. Rivera, of counsel and on the brief)

For the Charging Party, Cohen, Leder, Montalbano &
Grossman, LLC (Bruce D. Leder, of counsel and on the
brief)

DECISION

On June 17, 2013, the North Hudson Regional Fire and Rescue (Regional) moved for reconsideration of P.E.R.C. No. 2013-83, 39 NJPER __ (¶__ 2013). In that decision, we found that the Regional violated subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it unilaterally terminated the practice of paying terminal leave in one payment. We affirmed the Hearing Examiner's recommended decision and order in which she granted the North Hudson Firefighters Association's motion for summary judgment and denied the Regional's cross-motion for summary judgment on an unfair practice charged filed by the Association against the Regional.

The Regional's motion 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 Regional asserts that there is an issue of material fact with regard to its ability to afford to pay terminal leave in a lump sum. That assertion was addressed by the Commission (Commission decision, p. 10). The issue before us is only whether the Regional was required to negotiate over the change in payment scheduling. The Supplemental Certification of Executive Director Welz, while noting that the Regional's operational budget has passed and did not anticipate funding lump sum leave payments this year, does not state that it will be unable to pay. Rather, Mr. Welz describes some of the potentially difficult budgetary choices the Regional would have to make to satisfy the Commission's Order that lump sum leave payments be made to eligible unit members choosing that option. There were no disputes over the material facts that, while the parties were in negotiations for a successor agreement, the Regional unilaterally changed the practice of lump sum terminal leave payments by

implementing a practice of paying terminal leave in installments over a five year period.

Next, the Regional re-asserts the argument made in its exceptions to the Hearing Examiner's report that N.J.S.A. 40A:4-53(h) preempts the issue of how it should pay out terminal leave. We addressed that argument (Commission decision, pp. 6-9) and find no extraordinary circumstances warranting reconsideration of that statutory interpretation in relation to the mandatory negotiability of the terminal leave issues in this case.

Finally, the Regional asserts that the Commission's Order contains contradictory directives. The Order (Commission decision, pp. 11-12) simply orders immediate restoration of the past practice of allowing retirees the option to receive terminal leave in a lump sum upon retirement, and allows those who have already retired and been placed in the installment plan the option to receive the balance due in a lump sum. That the Order also requires negotiations over changes to that practice is not contradictory; the Regional can engage in good faith negotiations over changes to the terminal leave payment practice, but meanwhile must maintain the status quo of lump sum payment options until such time as any change is agreed to.

After review of the Regional's submissions and the Association's response opposing reconsideration, we deny the Regional's motion. A motion for reconsideration will be granted

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only in extraordinary circumstances. N.J.A.C. 19:14-8.4. Such circumstances are not present here.

ORDER

The motion for reconsideration is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Jones, Voos and Wall voted in favor of this decision. None opposed. Commissioner Boudreau was not present.

ISSUED: August 8, 2013

Trenton, New Jersey