

P.E.R.C. NO. 2015-52

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PATERSON,

Respondent,

-and-

Docket No. CO-2015-141

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL UNION #97,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies a motion for reconsideration of a Commission Designee's Interlocutory Order denying the International Brotherhood of Teamsters Local Union #97's application for interim relief in an unfair practice charge. The charge alleges that the City of Paterson violated N.J.S.A. 34:13A-5.4a(1) and (5) of the New Jersey Employer-Employee Relations Act when it unilaterally reduced a unit member's salary during collective negotiations. The Commission agrees with the Designee that IBT did not establish a substantial likelihood of success in a final Commission decision due to factual circumstances creating a legal issue of first impression for the Commission, and finds that IBT has not shown extraordinary circumstances warranting 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 Respondent, Ruderman & Glickman, P.C.,
attorneys (Steven S. Glickman, of counsel)

For the Charging Party, Mets, Schiro & McGovern, LLP,
attorneys (Matthew T. Clark, of counsel)

DECISION

International Brotherhood of Teamsters Local Union #97 (IBT) moves for reconsideration of a Commission Designee's January 16, 2015 Interlocutory Order denying its application for interim relief in an unfair practice charge it filed against the City of Paterson (City).^{1/} We deny IBT's motion for reconsideration.

The unfair practice charge filed by IBT on December 17, 2014 alleges that the City violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1)

^{1/} Pursuant to N.J.A.C. 19:14-9.5(b)2., the Commission Designee issued "An order, issued at the end of the proceedings on the return date, containing a brief statement of reasons for denying the application."

and (5)^{2/}, when, during the course of negotiations for an inaugural collective negotiations agreement, it unilaterally reduced a unit member's annual salary without negotiating with the majority representative.

The Designee found that the facts indicate that the City may have been required to reduce the unit member's salary based on a directive from the State of New Jersey authorized by a Memorandum of Understanding between the State and the City. The Designee determined that this issue has not been previously considered by the Commission, and therefore IBT failed to establish a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations. The Designee further found that IBT could not establish irreparable harm because the aggrieved unit member could obtain an adequate remedy of being made whole for any lost wages at the conclusion of the case. Accordingly, based on failure to establish the Crowe v. DeGioia, 90 N.J. 126, 132-134 (1982) factors of a substantial likelihood of success in a final decision, and irreparable harm, the Designee denied IBT's application for interim relief.

^{2/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by 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."

IBT asserts that the Designee failed to explicitly consider the fact that the parties were engaged in collective negotiations when the City reduced the unit member's salary. IBT recites Commission precedent finding that unilateral modifications of mandatorily terms and conditions of employment during collective negotiations constitute unfair practices and so adversely impact a majority representative's capacity to perform its duties that a "chilling effect" occurs. It therefore argues that the Designee applied the wrong standard for evaluating the City's alleged unfair practice and IBT's interim relief application.

Reconsideration will be granted in extraordinary circumstances; only in cases of exceptional importance will we intrude into the regular interim relief process by granting a motion for reconsideration of an interim relief decision by the full Commission. City of Passaic, P.E.R.C. No 2004-50, 30 NJPER 67 (¶21 2004); N.J.A.C. 19:14-8.4. We find that this case fails to meet the stringent standard of review for motions for reconsideration of interim relief decisions. We agree with the Designee that IBT did not establish a substantial likelihood of success in a final Commission decision due to the facts surrounding the City's impetus for the wage reduction which create a legal issue of first impression for the Commission. Although explicit recognition of the fact that the change occurred during collective negotiations may have affected the

irreparable harm analysis, we and the Designee need not even reach consideration of irreparable harm where it has already been found that one of the Crowe factors has not been established.

As a procedural matter we note that IBT appears to have misunderstood our explanation in Passaic, supra, regarding the reconsideration procedure. The typical process for motions for reconsideration is that they are filed with the Commission pursuant to N.J.A.C. 19:14-8.4. Accordingly, the Commission is ruling on the motion.

ORDER

The motion for reconsideration is denied and the unfair practice charge is referred to the Director of Unfair Practices for further processing.

BY ORDER OF THE COMMISSION

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

ISSUED: February 26, 2015

Trenton, New Jersey