

P.E.R.C. NO. 2017-15

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MERCER COUNTY SHERIFF'S OFFICE,

Respondent,

-and-

Docket No. CO-2015-156

FRATERNAL ORDER OF POLICE  
LODGE 140,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies the Sheriff's motion for reconsideration of P.E.R.C. No. 2017-2. In that decision, the Commission denied the Sheriff's motion for summary judgment as to the FOP's 5.4a(1) charge, finding that facts regarding that claim were not sufficiently developed. The Commission declines to consider in a motion for reconsideration an argument raised for the first time in that motion.

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, Trimboli & Prusinowski, LLC,  
attorneys (Stephen E. Trimboli, of counsel)

For the Charging Party, Markowitz & Richman, attorneys  
(Matthew D. Areman, of counsel)

DECISION

On August 31, 2016, the Mercer County Sheriff's Office (MCSO) moved for reconsideration of P.E.R.C. No. 2017-2, \_\_ NJPER \_\_ (¶\_\_ 2016). In that decision, the Commission granted in part, and denied in part, the MCSO's motion for summary judgment requesting dismissal of an unfair practice charge filed by the Fraternal Order of Police, Lodge No. 140 (FOP). Among other determinations, we denied the MCSO's motion for summary judgment

as to the FOP's 5.4a(1)<sup>1/</sup> charge,<sup>2/</sup> finding that facts regarding that claim were not sufficiently developed.

The MCSO has filed a brief in support of its motion. The FOP has filed an opposition brief.

Reconsideration "will only be granted based on a demonstration of extraordinary circumstances and exceptional importance." N.J.A.C. 19:13-3.12.

The MCSO maintains that the Commission denied summary judgment on the FOP's 5.4a(1) charge based upon what it deemed were disputed material facts (i.e., whether the Sheriff nodded his head in response to a PBA member's statements regarding the PBA withdrawing its representation petition if the local FOP president were replaced and, if so, what information the Sheriff intended to convey). However, the MCSO contends that N.J.S.A. 34:13A-5.4a(1) incorporates 29 U.S.C. §158(c), the free speech provision of the National Labor Relations Act that permits a

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1/ This provision prohibits 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."

2/ Among other allegations, the FOP alleged that the MCSO violated the Act as follows: (1) the Sheriff brought members of the PBA in and advised them that if they filed a representation petition to replace the FOP as majority representative, he would make sure they received a good contract at no cost to the PBA; (2) after the PBA filed its representation petition, the MCSO's representatives advised the FOP that if it forced the local FOP president to resign, the MCSO's representatives would with 99.9% confidence force the PBA to withdraw its representation petition.

public employer to express its opinion or comment upon labor relations matters so long as there is no threat of reprisal or coercion or promise of benefit. Accordingly, the MCSO argues that even if the facts pertaining to the Sheriff's alleged head nod are as the FOP charges (i.e., that the Sheriff intended to express his full agreement with the PBA member's statements), the FOP is unable to make out a 5.4a(1) claim as a matter of law. The MCSO asserts that the Sheriff was engaged in an honest exchange between equals and that his private expression of views, arguments or opinions regarding a labor relations matter may not constitute or be evidence of an unfair practice.

The FOP argues that the MCSO has failed to meet its burden of establishing extraordinary circumstances. Initially, the FOP cites Camden County Sheriff, P.E.R.C. No. 2004-65, 30 NJPER 133 (¶50 2004) and State of New Jersey (OER), P.E.R.C. No. 88-45, 13 NJPER 841 (¶18323 1987) in support of the proposition that the Commission has consistently held that a party may not raise an argument for the first time through a motion for reconsideration. The FOP argues that the MCSO's position concerning the Sheriff's free speech rights is a new argument that may not form the basis for reconsideration of the Commission's decision. Further, the FOP maintains that the Commission denied summary judgment on the 5.4a(1) charge because the record was insufficient to determine whether the Sheriff's actions/speech did in fact contain a threat

of reprisal or force or promise of benefit. The FOP concedes, however, that the MCSO's position regarding the merits of this issue may be reasserted after the record is fully developed.

The MCSO's claim that the Sheriff did "nothing more than visually express his 'views, argument, or opinion' on a labor relations matter" attempts to establish a fact that the Commission determined was not sufficiently developed by the parties' certifications. Moreover, the Commission has held that "[t]o the extent that . . . [a party] is . . . adding a . . . [new] argument, we cannot consider that argument for the first time through a motion for reconsideration." Camden County Sheriff, P.E.R.C. No. 2004-65, 30 NJPER 133 (¶50 2004); accord State of New Jersey (OER), P.E.R.C. No. 88-45, 13 NJPER 841 (¶18323 1987) (holding that a party cannot raise a claim for the first time on a motion for reconsideration). Given that the MCSO did not assert that the Sheriff's alleged head nod constituted an exercise of his free speech rights in its motion for summary judgment, we cannot consider that argument for the first time through a motion for reconsideration. Camden County Sheriff; State of New Jersey (OER).

ORDER

The Mercer County Sheriff's Office motion for reconsideration is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: September 22, 2016

Trenton, New Jersey