

P.E.R.C. NO. 2018-30

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ROCKAWAY TOWNSHIP,

Respondent,

-and-

Docket No. CO-2018-111

ROCKAWAY TOWNSHIP FRATERNAL ORDER  
OF POLICE LODGE NO. 31,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies the FOP's motion for reconsideration of a Commission Designee's interim relief decision denying the FOP's request for interim relief. The FOP's unfair practice charge alleges that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4a(1) through (7), when the Chief of Police terminated a program allowing officers to pair up to swap shifts in order to work steady shifts for three months, rather than rotating between the day and night shift every four weeks. The Commission finds that the Designee did not violate any procedural rules by initially deciding and denying the FOP's motion for reconsideration, and that no Commission rules entitle the FOP to full Commission review of a motion for reconsideration of an interim relief decision. The Commission agrees with the Designee that the FOP did not establish a substantial likelihood of prevailing on the merits, and finds that the FOP's arguments demonstrate that there are disputed material facts. Holding that the case is not of exceptional importance warranting intrusion into the regular interim relief process, the Commission denies reconsideration and refers the charge to the Director of Unfair Practices for further processing.

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, Laddey, Clark, & Ryan, LLP,  
attorneys (Thomas N. Ryan, of counsel)

For the Charging Party, Loccke, Correia, & Bukosky,  
attorneys (Corey M. Sargeant, of counsel)

DECISION

On December 14, 2017, the Rockaway Township Fraternal Order of Police Lodge No. 31 (FOP) moved for reconsideration of a Commission Designee's interim relief decision, I.R. No. 2018-6, 44 NJPER 200 (¶58 2017), and of the Designee's subsequent decision denying the FOP's motion for reconsideration, I.R. No. 2018-8, 44 NJPER \_\_\_\_ (¶\_\_ 2017). The FOP's underlying unfair practice charge alleges that Rockaway Township (Township) violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4a(1) through (7), when the Chief of Police terminated a program allowing officers

to pair up to work steady shifts for three months, rather than rotating between the day and night shift every four weeks.

On November 15, 2017, the Designee denied the FOP's application for interim relief, finding that a temporary shift exchange program requires the advance permission of the Chief and that the directive ending the program was not a mandatorily negotiable term and condition of employment. On November 30, the FOP filed a motion for reconsideration of I.R. No. 2018-6. On December 5, the Township replied with a letter brief opposing reconsideration. On December 6, the Commission Designee issued a decision, I.R. No. 2018-8, denying the FOP's motion for reconsideration.

By letter brief of December 14, 2017, the FOP moved for reconsideration by the full Commission of both I.R. No. 2016-6 and I.R. No. 2016-8. The FOP's letter brief argues that the Designee's decision on the motion for reconsideration was procedurally deficient because only the Commission may consider a motion for reconsideration of an interim relief decision. The FOP's brief also incorporated its substantive arguments by referencing and attaching a copy of its original November 30 motion for reconsideration brief. On December 21, the Township submitted a letter brief opposing reconsideration, disagreeing with the FOP's procedural argument, and incorporating by reference the arguments asserted in its previous brief.

We first address the FOP's procedural argument that it was improper for the Commission Designee to decide the motion for reconsideration because N.J.A.C. 19:14-8.4 "contemplates a full commission for review, not just the assigned commission designee."

Interim relief orders are interlocutory decisions. N.J.A.C. 19:14-9.1.<sup>1/</sup> The Commission Chair or another person designated by the Chair is authorized to review, process, and dispose of interim relief applications. See N.J.A.C. 19:14-9.2(c), (d), (e), and (g); N.J.A.C. 19:14-9.3(a) to (c); and N.J.A.C. 19:14-9.4. See also N.J.A.C. 19:13-3.11 (interim relief applications during scope of negotiations proceedings).

Strictly speaking, our rules do not provide for reconsideration of interim relief decisions or orders.<sup>2/</sup> N.J.A.C. 19:14-8.4, the regulation on which the FOP relies in support of its argument that it was entitled to full Commission review of the Designee's interim order, deals with

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1/ "This subchapter shall be applicable to requests for interim relief in both unfair practice proceedings under this chapter and in scope of negotiations proceedings pursuant to N.J.A.C. 19:13-3.11. Any order issued pursuant to this subchapter is interlocutory." N.J.A.C. 19:14-9.1.

2/ That there is no rule explicitly authorizing reconsideration of designee interim relief decisions does not preclude reconsideration. Administrative agencies have inherent power of reconsideration absent statutory qualification. Handlon v. Belleville, 4 N.J. 99 (1950). See also Borough of North Arlington, P.E.R.C. No. 2012-4, 38 NJPER 134 (¶34 2011).

reconsideration of final Commission decisions in unfair practice proceedings.<sup>3/</sup> It provides in pertinent part:

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

[Emphasis added.]

In addition to referring to a "Commission decision," the rule is placed among other regulations regarding "Procedures Before the Commission" following the issuance of a hearing examiner's report and recommended decision. Between the organization of the regulations and the language used in N.J.A.C. 19:14-8.4, it is clear that the rule does not support the FOP's argument that the Designee improperly decided its initial reconsideration motion or entitle a party to Commission reconsideration of an interim order.

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<sup>3/</sup> See also, N.J.A.C. 19:13-3.12 (motions for reconsideration of final Commission scope of negotiations decisions); and N.J.A.C. 19:11-9.3 (motions for reconsideration of final Commission representation decisions).

Nor does our Act. N.J.S.A. 34:13A-6(f)<sup>4/</sup> authorizes the delegation of Commission powers, providing in relevant part:

In carrying out any of its work under this act, the commission may designate one of its members or an officer of the commission to act on its behalf and may delegate to such designee one or more of its duties hereunder and, for such purpose, such designee shall have all of the powers hereby conferred upon the commission in connection with the discharge of the duty or duties so delegated.

We acknowledge that in County of Ocean, P.E.R.C. No. 2011-6, 36 NJPER 303 (¶115 2010) and in City of Paterson, P.E.R.C. No. 2015-52, 41 NJPER 391 (¶122 2015), respectively, we cited N.J.A.C. 19:14-8.4 in stating that a motion for reconsideration of an interim relief decision must be filed within 15 days of service of the decision and that such motions are typically filed with the Commission. We also acknowledge that the Commission considered motions for reconsideration of interim orders in Borough of Fairview, P.E.R.C. No. 97-96, 23 NJPER 163 (¶28081 1997) and in City of Paterson, P.E.R.C. No. 2015-52, 41 NJPER 391 (¶122 2015), cases cited by the FOP.<sup>5/</sup>

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4/ See also N.J.A.C. 19:10-4.1, providing that a designee of the Commission "has all the powers necessary to permit the discharge of the duty or duties delegated," but also that "the Commission at all times retains the authority to designate itself or some other officer of the Commission to perform that function in a particular case or as circumstances may require."

5/ The FOP cites two other cases to support the proposition that motions for reconsideration are reviewed by the  
(continued...)

At the same time, we are aware that there have been instances where a designee decided a motion for reconsideration of the interim decision as in Franklin Tp., P.E.R.C. No. 2006-103, 32 NJPER 246 (¶102 2006), and where we have suggested that very procedure as in City of Passaic, P.E.R.C. No. 2004-50, 30 NJPER 67 (¶21 2004), where we stated:

In rare circumstances, a designee might have misunderstood the facts presented or a party's argument. That situation might warrant the designee's granting a motion for reconsideration of his or her own decision. However, only in cases of exceptional importance will we intrude into the regular interim relief process by granting a motion for reconsideration by the full Commission. A designee's interim relief decision should rarely be a springboard for continued interim relief litigation.

[Passaic, 30 NJPER at 67.]

Thus, it is not improper for a motion for reconsideration of an interim relief decision to be referred to the Commission Designee even though the moving party may have addressed the motion to the Commission. Accordingly, the Commission Designee

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5/ (...continued)  
Commission, not the "deciding commission designee," but the other two decisions did not involve motions for reconsideration of interim relief decisions. See Barrington Bd. of Ed., P.E.R.C. No. 81-134, 7 NJPER 336 (¶12150 1981) (reconsideration of final Commission decision) and State of NJ (Juvenile Justice) and Judy Thorpe, P.E.R.C. No. 2015-12, 41 NJPER 155 (¶52 2014) (same).

here did not violate any procedural rules by deciding the FOP's initial motion for reconsideration.

Although the FOP does not have an entitlement to a second review of the Designee's interim decision, we now turn to the substantive aspects of its motion for reconsideration. Reconsideration will be granted only in cases of exceptional importance. Passaic, supra.

The FOP asserts that reconsideration is warranted because the Designee mischaracterized the dispute as involving "shift swaps" or "shift exchanges" instead of "steady patrol shifts" or "a change in shift schedule." It argues that the Designee mischaracterized the day and night shift selection process as "informal" rather than "formal." The FOP contends that the Designee defined the unit's "normal work schedule" as four week rotations of day and night shifts, but that the parties' contracts do not define a normal schedule or rotating shift. The FOP asserts that the Designee misunderstood its legal argument that the Township eliminated a mandatorily negotiable benefit without negotiations during a contract term and/or while the parties were in collective negotiations.

The Township responds that the Designee correctly understood the facts concerning the four week day and night shift rotating schedule and the shift swap request process to remain on steady day or night shifts for up to three months at a time. The



Township argues that because the Chief's permission was always required for the shift swaps and FOP members may continue to request shift swaps, there has been no change in a mandatorily negotiable term or condition of employment and that it remains the Chief's managerial prerogative to approve or deny such requests. It asserts that the Chief's September 21, 2017 memorandum revoking any previously granted modifications to the regular shift schedule was an exercise of that prerogative.

Although this case is important to the parties, we find that it is not a case of exceptional importance warranting our intrusion into the regular interim relief process. Passaic; Little Falls Tp., P.E.R.C. No. 2006-41, 31 NJPER 394 (¶155 2005). We also agree with the Designee that the FOP did not establish a substantial likelihood of prevailing on the merits. The FOP's arguments demonstrate that there are disputed material facts. Crowe v. De Gioia, 90 N.J. 126, 133 (1982). Reconsideration by the full Commission is accordingly denied.

ORDER

The Rockaway Township Fraternal Order of Police Lodge No. 31's 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, Eskilson and Voos voted in favor of this decision. None opposed. Commissioner Jones was not present.

ISSUED: February 22, 2018

Trenton, New Jersey