

P.E.R.C. NO. 2018-36

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WILLIAM TOOLEN, et al.,

Plaintiffs,

-and-

Docket No. MC-2017-001

STATE OF NEW JERSEY, et al.,

Defendants.

STATE TROOPERS FRATERNAL
ASSOCIATION OF NEW JERSEY, et al.,

Plaintiffs,

-and-

Docket No. MC-2017-002

STATE OF NEW JERSEY, et al.,

Defendants.

SYNOPSIS

The Public Employment Relations Commission denies the motions for reconsideration of P.E.R.C. No. 2018-29 filed by the plaintiffs and plaintiff-intervenors. In that decision, the Commission dismissed complaints filed by the plaintiffs, finding that none of the cited statutes required the payment of salary increments during the hiatus period between collective negotiations agreements. The Commission finds no basis upon which to grant reconsideration given that the plaintiffs and plaintiff-intervenors failed to challenge the substantive legal validity of P.E.R.C. No. 2018-29. Moreover, the Commission declines to consider arguments raised for the first time in a motion for 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 Plaintiffs in MC-2017-001, Crivelli & Barbati, attorneys (Frank M. Crivelli, of counsel and the on brief; Kevin D. Jarvis, on the brief; David B. Beckett, on the brief; Michael A. Bukosky, on the brief; Steven P. Weissman, on the brief)

For the Defendants in MC-2017-001 and MC-2017-002, Montgomery, McCracken, Walker & Rhoads LLP, attorneys, (William K. Kennedy, of counsel)

For the Plaintiffs in MC-2017-002, Loccke, Correia & Bukosky, attorneys (Michael A. Bukosky, of counsel)

DECISION

On February 8 and 9, 2018, plaintiffs and plaintiff-intervenors moved for reconsideration of P.E.R.C. No. 2018-29, ___

NJPER __ (¶__ 2018).^{1/} In that decision, the Commission dismissed complaints filed by the plaintiffs, finding that none of the cited statutes required the payment of salary increments during the hiatus between the expiration of one collective negotiations agreement (CNA) and the commencement of a successor CNA.^{2/}

The plaintiffs and plaintiff-intervenors (collectively, plaintiffs) have filed briefs and exhibits in support of their respective motions. The defendants (i.e., the State of New Jersey and various State departments and officials) have filed a brief opposing reconsideration.

Reconsideration "will only be granted based on a demonstration of extraordinary circumstances and exceptional importance." N.J.A.C. 19:13-3.12; see also N.J.A.C. 19:14-8.4.

The plaintiffs argue that the failure to grant the parties' joint request to remove these matters from the Commission's January 25, 2018 meeting agenda and to "hold them in abeyance until further notice" constitutes "extraordinary circumstances"

^{1/} The plaintiffs, plaintiff-intervenors, and defendants are identified in P.E.R.C. No. 2018-29. See n.1 of that decision. The motion filed on February 8 was said to be on behalf of the State Troopers Fraternal Association (STFA). The motion filed the next day was said to be filed on behalf of all plaintiffs, including the STFA, and the plaintiff-intervenors. Both motions referenced both lawsuits, as captioned above.

^{2/} The statutes are listed in n.2 of P.E.R.C. No. 2018-29.

warranting reconsideration.^{3/} Plaintiffs also argue that a question involving a purported designation of the Chair also “contributes as an element warranting reconsideration.”

Defendants argue that the plaintiffs and plaintiff-intervenors have failed to demonstrate the extraordinary circumstances necessary to warrant reconsideration. Defendants maintain that the plaintiffs and plaintiff-intervenors “have not argued that PERC’s stated reasons for its decision . . . were flawed.” Defendants further argue that the plaintiffs and plaintiff-intervenors “cannot show that they have been prejudiced by PERC’s decision.” They note that the underlying matters have been pending for over two years and were transferred by the Court to the Commission for decision almost a year ago. Defendants also assert that the argument involving the designation of a Commission Chair “should be rejected because it was not raised prior to PERC’s decision . . . and PERC cannot consider arguments raised for the first time on a motion for reconsideration.”

We find that the plaintiffs and plaintiff-intervenors have failed to demonstrate extraordinary circumstances and exceptional

^{3/} The request, made on January 22, stated that the matters should be held in abeyance until further notice “to provide the Governor’s Administration with an opportunity to analyze the issues involved.” A response, provided on January 24, stated that the request did not indicate that the matters had been resolved and noted that they had been transferred to the Commission for decision by Court orders dated March 29, 2017.

importance warranting reconsideration. New Jersey courts have held that motions for reconsideration "should be utilized for those cases which fall into that narrow corridor in which either (1) the Court has expressed its decision based upon a palpably incorrect or irrational basis, or (2) it is obvious that the Court either did not consider, or failed to appreciate the significance of probative, competent evidence." Capital Finance Co. of Delaware Valley, Inc. v. Asterbadi, 398 N.J. Super. 299, 310 (App. Div. 2008), certif. den. 195 N.J. 521 (2008); see also Palombi v. Palombi, 414 N.J. Super. 274, 288 (App. Div. 2010). Given that the plaintiffs and plaintiff-intervenors have not challenged the substantive legal validity of the Commission's decision, we find no basis upon which to grant reconsideration, and we agree that the decision does not prejudice them.

Turning to the claim involving designation of a Chair, the Commission has held that "to the extent a party is adding a new argument, we cannot consider that argument for the first time through a motion for reconsideration." Mercer County Sheriff's Office, P.E.R.C. No. 2017-15, 43 NJPER 114 (¶33 2016) (citations omitted); see also Lahue v. Pio Costa, 263 N.J. Super. 575, 598 (App. Div. 1993) (the basis for a motion reconsideration "focuses upon what was before the court in the first instance" given that R. 4:49-2 "was not intended to become the vehicle for new affirmative defenses"). Given that the plaintiffs and plaintiff-

intervenor did not advance any claim regarding the designation before the issuance of P.E.R.C. No. 2018-29, we cannot consider that argument for the first time through a motion for consideration.^{4/}

ORDER

The motions for reconsideration filed by the plaintiffs and plaintiff-intervenors is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau and Eskilson voted in favor of this decision. Commissioner Voos voted against this decision. Commissioner Jones was not present.

ISSUED: February 22, 2018

Trenton, New Jersey

^{4/} We do find, however, that the Commission, including the Chair, was legally constituted to act on these matters for the reasons stated at and read into the record of the Commission's January 25, 2018 meeting.