

P.E.R.C. NO. 2019-20

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BERGEN COUNTY and
BERGEN COUNTY SHERIFF'S OFFICE,

Respondent,

-and-

Docket No. CO-2019-036

BERGEN COUNTY PBA, LOCAL NO. 49,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies the County and Sheriff's Office's motion for reconsideration of a Commission Designee's decision granting interim relief with regard to the PBA's unfair practice charge alleging that the Sheriff's Office unlawfully eliminated a day tour worked by PBA members, transferred those duties to Sheriff's Officers, and eliminated seniority-based shift and tour selections. Finding that the Commission Designee's opinion fully reviewed the facts of and discussed the day tour assignment dispute, including the Civil Service Commission's ruling that County Police work should not be assigned to Sheriff's Officers and vice-versa, the Commission rejects the Sheriff's Office request for reconsideration on that issue. Noting that the Commission Designee found that the Sheriff's Office had a duty to negotiate before changing the crediting of military time toward senior pay, and that the Sheriff's Office did not assert to the Designee that the issue was a contract dispute that must be resolved through negotiated grievance procedures, the Commission rejects the Sheriff's Office's request for reconsideration on that issue.

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 C. Elston & Associates, LLC
(Catherine M. Elston, of counsel)

For the Charging Party Loccke, Correia & Bukosky,
attorneys (Michael A. Bukosky, of counsel)

DECISION ON MOTION FOR RECONSIDERATION

On October 26, 2018, Bergen County and Bergen County Sheriff's Office (Sheriff's Office) moved for reconsideration of I.R. No. 2019-6, ____ NJPER ____ (§ ____ 2018). In that decision, a Commission Designee granted interim relief with regard to the Bergen County PBA, Local 49's (PBA) allegation that the Sheriff's Office unlawfully eliminated a day tour worked by PBA members, transferred those duties to Sheriff's Officers and eliminated seniority based shift and tour selection. The Commission Designee also granted interim relief with regard to the PBA's allegation that the Sheriff's Office eliminated credit

for served military time towards eligibility for the senior officer pay benefit. The Commission Designee denied interim relief with regard to the PBA's allegation that the Sheriff's Office reduced vacation and time off. The PBA opposes reconsideration.^{1/}

A Commission Designee acts on behalf of the full Commission. N.J.A.C. 19:10-4.1. In City of Passaic, P.E.R.C. No. 2004-50, 30 NJPER 67 (¶21 2004), we explained that we will grant reconsideration of a Commission Designee's interim relief decision only in cases of exceptional importance:

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.

[Ibid.]

^{1/} We reject the PBA's claim that the motion for reconsideration is untimely. If the due date was 5 p.m. on October 26, 2018, we find that filing of the motion at 5:47 p.m. on that day did not prejudice the PBA. The PBA's complaint that it filed a related court action at 4:00 p.m. does not show the 5:47 p.m. filing would have made the Court application unnecessary as it was submitted by the PBA before the asserted 5 p.m. deadline for the Sheriff's Office's application to the Commission.

N.J.A.C. 19:14-8.4 provides that a motion for reconsideration may be granted only where the moving party has established "extraordinary circumstances." Motions for reconsideration are not to be used to reiterate facts or arguments that were, or could have been, raised in the submissions to the Commission Designee. See Union Tp. and FMBA Local No. 46, FMBA Local No. 246 and PBA Local No. 69, I.R. No. 2002-7, 28 NJPER 86 (¶3031 2001), recon. den. P.E.R.C. No. 2002-55, 28 NJPER 198 (¶33070 2002).

On January 1, 2015, the County, Sheriff's Office and the Bergen County Prosecutor signed a memorandum of agreement "For the Long Term Realignment of Police Services by and between the Bergen Sheriff's office Police Department and the Office of the Bergen Sheriff's office Sheriff" (Realignment MOA). The Realignment MOA was approved by the Board of Chosen Freeholders. The Realignment MOA, among other things, transferred the County Police Department and placed it under the authority of the Sheriff's Office. However, section 2.3 of the Realignment MOA provides as follows:

[n]o changes shall be required of any labor contract in existence between the County and the Sheriff PBA Local 134 and Bergen County Police Local 49, both of which were approved by the Freeholder Board, and the both the Bergen County Police PBA staff and the Sheriff Department PBA staff remain unchanged and neither shall not, for purposes of salary, benefits and other terms

and conditions of employment, be merged with each other.

The Sheriff's Office asserts that reconsideration is warranted because on September 21, 2018 the Sheriff and four of his subordinates abruptly resigned, resulting in changed factual circumstances that tips the relative hardships in favor of the Sheriff's Office. The Sheriff's Office also argues that the transfer of the day tour from County Police to Sheriff's Officers is a matter of first impression as to whether the Realignment MOA provides for a reorganization of the delivery of governmental services. The Sheriff's Office also contends that the issue of changing the crediting of served military time toward the senior pay benefit is essentially a contract dispute that must be resolved through negotiated grievance procedures.^{2/}

On September 24 and 25, 2018, the PBA requested that the Commission Designee supplement the record with a recording of controversial statements that led to the Sheriff's resignation. The Sheriff's Office responded to that request on October 1, asserting that the recording should not be made part of the record because it was prejudicial and irrelevant. The Commission Designee determined that the recording was not sufficiently relevant to the proceeding and denied the PBA's request. In its October 1st submission, the Sheriff's Office had an opportunity

^{2/} The senior officer pay dispute is the subject of a pending grievance.

to explain how the resignation of the Sheriff and his subordinates would impact upon the relief that the PBA was seeking. However, the Sheriff's Office did not use its supplemental submission to advance any relevant arguments.

The Commission Designee's opinion fully reviewed the dispute regarding the assignment of Sheriff's Officers to work the day tour that had been performed by County Police. He noted that the Sheriff, "has not factually substantiated its stated policy goals necessitating the unilateral transfer of patrol duties and elimination of the police day shift. Nor has it articulated how the transfer affects the delivery of government services. . . ."

I.R. No. 2019-6 at 23. While the motion for reconsideration asserts that the case implicates "the public safety of more than one million residents" the contention of the Sheriff's Office is hollow as it does not explain how public safety is implicated or why this argument was not substantively made to the Commission Designee. The Commission Designee's ruling contains a full discussion of the facts surrounding the day tour dispute, including the Civil Service Commission's ruling that County Police work should not be assigned to Sheriff's Officers and vice-versa. He also comprehensively reviewed and applied the legal principles governing unit work disputes and exceptions. We reject the Sheriff's Office's request for reconsideration on this issue.

We also reject the Sheriff's Office's request for reconsideration of the senior pay issue. The Commission Designee found that the crediting of military time toward senior pay is either an existing employment condition or an implied contractual commitment based on an established practice, both triggering the duty to negotiate before making a change. I.R. No. 2019-6 at 26. The Sheriff's Office's assertion that the senior pay dispute is essentially a contract dispute that must be resolved through negotiated grievance procedures was not raised to the Commission Designee and we will not consider it now.

ORDER

The motion for reconsideration is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: November 29, 2018

Trenton, New Jersey