

P.E.R.C. NO. 2020-6

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OCEAN COUNTY COLLEGE,

Petitioner,

-and-

Docket No. SN-2019-034

OCEAN COUNTY COLLEGE FACULTY
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the College's motion for reconsideration of P.E.R.C. No. 2019-49, 45 NJPER 417 (¶112 2019), which found mandatorily negotiable two contract clauses concerning preservation of unit work. Finding the College has not demonstrated extraordinary circumstances or exceptional importance warranting reconsideration, the Commission rejects arguments made by the College in support of its motion that were raised and rejected in the prior decision. The Commission further rejects the College's unsupported argument, improperly raised for the first time in its motion, that the Association waived negotiation over unit-work preservation because instructional work has historically been shared with non-unit staff. The Commission also finds the College puts misplaced reliance, in support of this argument, on an interim-relief decision in a still-pending unfair practice charge involving the same parties.

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 Petitioner, Cleary Giacobbe Alfieri Jacobs, LLC, attorneys (Matthew J. Giacobbe, of counsel and on the brief; Gregory J. Franklin, of counsel and on the brief)

For the Respondent, Detzky, Hunter & DeFillippo, LLC, attorneys (Stephen B. Hunter, of counsel and on the brief)

DECISION

On June 18 2019, Ocean County College (College) moved for reconsideration of P.E.R.C. No. 2019-49, 45 NJPER 417 (¶112 2019). In that decision we found mandatorily negotiable two clauses from the parties' collective negotiations agreement (CNA) concerning preservation of unit work that the College sought to have excised from successor CNAs. The two clauses at issue are as follows:

Article III, Section J

Preference - FAOCC Members shall be given preference to Faculty duties within their discipline, for which they are qualified.

Article V, Section B(5) (in pertinent part)

Extra Pay Assignment Priority - Full-Time Faculty Members shall have preference, according to qualifications, as determined by the Department Dean or Vice President of Academic Affairs, to teach courses involving extra pay.

We found these clauses to be mandatorily negotiable unit work preservation provisions that provide Ocean County College Faculty Association (Association) unit members preference for faculty duties within their discipline over individuals not in the unit. The College has filed a brief in support of its motion. The Association has filed an opposition brief.

Reconsideration "will only be granted based on a demonstration of extraordinary circumstances and exceptional importance. The movant shall specify and bear the burden of establishing the grounds warranting reconsideration." N.J.A.C. 19:13-3.12(a). We will not consider arguments raised 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). See also, Mercer County Sheriff's Office, P.E.R.C. No. 2017-15, 43 NJPER 114 (¶33 2016); In re Toolen, P.E.R.C. No. 2018-36, 44 NJPER 329 (¶94 2018).

First, the College argues that reconsideration should be granted because our decision was based on a palpably incorrect analysis of the law. The College asserts that the clauses do not relate to preservation of unit work and that they interfere with the College's non-negotiable managerial prerogative to make staffing assignments, akin to the clauses at issue in Black Horse Pike Reg. Sch. Dist., P.E.R.C. No. 2007-38, 32 NJPER 396 (¶164 2006). The Association counters that the College is raising the same factual and legal arguments it included in its prior briefs, which do not warrant reconsideration.

We reject the college's argument as it reiterates the same arguments made below. The College's reliance on Black Horse Pike is inapt. The clauses at issue in Black Horse Pike that the College cites pertain to a preference for in-district teachers (unit members) over out-of-district candidates (who would become unit members upon hiring). The Association in that case argued that this clause was a negotiable preservation of unit work provision. The Commission found that it was not a preservation of unit work provision because "any successful outside candidates will be included in the Association's unit and compensated at rates negotiated by the Association. Thus, there will be no loss of unit work." Here, we found that the clauses at issue are unit work preservation provisions because they provide preference to Association unit members over non-unit members.

Second, the College argues that even if the clauses do not interfere with the managerial prerogative to make staffing assignments, the Association has waived its ability to negotiate preservation of unit work based on the factual claim that instructional work has historically been shared with other non-Association staff. The College asserts that the Commission has consistently held that the shifting of unit work to non-unit employees is mandatorily negotiable except when unit employees have historically shared job duties with non-unit employees.

In support of this argument, the College relies on the findings of a Commission Designee's interim relief decision in an unfair practice charge between these same parties, Bd. of Trustees of Ocean Cty. Coll., I.R. No. 2011-27, 41 NJPER 73 (¶24 2010).^{1/} The College asserts that the Commission Designee found that Association instructional work has historically been and is currently shared with employees in other negotiations units. Based on this finding, the College argues reconsideration should be granted because the clauses at issue would require that Association members be given preference over potentially more

^{1/} The Association's unfair practice charge (CO-2011-137) alleges that the College created a new employment title, Lecturer, which was not included in the Association's unit and shifted instructional work outside the unit. The Association's application for interim relief was denied. A complaint issued on the charge and a multiple-day hearing was conducted before a hearing examiner. A recommended decision is pending.

qualified non-Association members thereby interfering with the College's managerial prerogative. In response to this Argument, the Association notes that these facts and arguments raised by the College in its motion for reconsideration were not raised in its scope of negotiations petition.

We reject the College's arguments, which have been improperly raised for the first time in this motion for reconsideration and are unsupported by certification.^{2/} Moreover, the College's reliance on any findings in Bd. of Trustees of Ocean Cty. Coll., I.R. No. 2011-27, is misplaced. Besides this interim relief decision not being raised previously, interim relief has a different legal standard which is inapplicable to our scope of negotiations analysis. Any findings in the interim relief decision were not a final factual or legal determination. In fact, the Commission denied motions for summary judgment filed by both parties in the unfair practice charge precisely because there remain "genuine issues of material fact" regarding the issues the College asks us to consider for the first time in this motion for reconsideration. Bd. of Trustees of Ocean Cty. Coll., P.E.R.C. No. 2017-47, 43 NJPER 334 (¶94 2017).

^{2/} N.J.A.C. 19:13-3.6(f) requires that all pertinent facts be supported by certifications based upon personal knowledge. The College did not file any certifications with its briefs, and the Association filed a certification of David Bordelon, a professor and former President of the Association.

For the foregoing reasons, we find that the College has raised arguments, unsupported by any certified facts in the record, for the first time through its motion for reconsideration, and it has not demonstrated extraordinary circumstances and exceptional importance warranting reconsideration of our prior decision.

ORDER

Ocean County College's motion for reconsideration is denied.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Jones, Papero and Voos voted in favor of this decision. None opposed. Commissioner Bonanni recused himself.

ISSUED: August 15, 2019

Trenton, New Jersey