

P.E.R.C. NO. 2020-62

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY  
(DEPARTMENT OF LAW AND PUBLIC SAFETY),

Respondent,

-and-

Docket No. CO-2020-207

STATE TROOPERS NON-COMMISSIONED  
OFFICERS ASSOCIATION OF NEW JERSEY,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies the State Troopers Non-Commissioned Officers Association's motion for reconsideration of I.R. No. 2020-15, 46 NJPER 459 (¶104\_2020), wherein a Commission Designee denied the Association's application for interim relief seeking an order enjoining the employer, State of New Jersey, Department of Law and Public Safety, from unilaterally deducting monies from a Sergeant's paycheck to recoup an allegedly erroneous salary overpayment. The Commission finds that in concluding that the State's unilateral action did not have a tendency to irreparably undermine or chill the negotiations process, the Designee did not unreasonably consider evidence that the State acted pursuant to a final decision of the Civil Service Commission affecting a single employee with a deduction schedule less financially detrimental to that employee. The Commission finds this did not establish extraordinary circumstances or a case of exceptional importance warranting reconsideration, given that any financial detriment would be fully remunerated to the Sergeant if the Association prevails on the pending unfair practice charge or grievance arbitration. Finally, the Commission finds that a grant of interim relief would be inappropriate because material facts are in dispute, specifically as to whether the State attempted to engage in good faith negotiations before implementing the recoupment action.

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.

P.E.R.C. NO. 2020-62

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY  
(DEPARTMENT OF LAW AND PUBLIC SAFETY),

Respondent,

-and-

Docket No. CO-2020-207

STATE TROOPERS NON-COMMISSIONED  
OFFICERS ASSOCIATION OF NEW JERSEY,

Charging Party.

Appearances:

For the Respondent, Gurbir S. Grewal, Attorney General  
(Jana R. DiCosmo, Deputy Attorney General)

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

DECISION

We deny a motion, filed by the State Troopers Non-Commissioned Officers Association (STNCOA), for reconsideration of I.R. No. 2020-15, 46 NJPER 459 (¶104 2020). In that decision a Commission Designee denied STNCOA's application for interim relief seeking an order enjoining the employer, State of New Jersey, Department of Law and Public Safety (State), from unilaterally deducting monies from Sergeant V.A.'s (V.A.) paycheck to recoup an allegedly erroneous \$29,000 salary overpayment, pending conclusion of negotiations and contractual grievance arbitration over prepayment terms and mitigation over the alleged overpayment.

In support of its motion for reconsideration, STNCOA argues that the Designee's decision created a "'single employee' exception which shields unilateral changes made by an employer," and that such an exception "is an extraordinary departure from past Commission precedent which has always treated unilateral changes as a 'unit' issue and not as a singular employee issue." STNCOA further argues that it was unreasonable for the Designee not to believe that the State's unilateral action here had a tendency to undermine or chill the negotiations process. In support of these arguments, STNCOA respectively relies on E. Brunswick Bd. of Ed., P.E.R.C. No. 80-31, 5 NJPER 398 (¶10206 1979), aff'd in pt., rev'd in pt., NJPER Supp.2d 78 (¶61 App. Div. 1980), and S. Orange-Maplewood Bd. of Ed., P.E.R.C. No. 89-1, 14 NJPER 498 (¶19209 1988), neither of which addressed or decided interim relief applications.

Reconsideration may be granted in extraordinary circumstances, N.J.A.C. 19:14-8.4, and only in cases of exceptional importance will the full Commission intrude into the regular interim relief process by granting a motion for reconsideration of an interim relief decision by a Commission designee. City of Passaic, P.E.R.C. No. 2004-50, 30 NJPER 67 (¶21 2004). "A designee's interim relief decision should rarely be a springboard for continued interim relief litigation" before the full Commission. Id.

We find that STNCOA has not established extraordinary circumstances or a case of exceptional importance warranting our reconsideration of the Designee's decision. We are not compelled to intrude into the regular interim relief process merely by the fact that the Designee, in denying interim relief, considered that the State acted pursuant to a final decision of the Civil Service Commission (CSC) affecting a single employee,<sup>1/</sup> and proposed a deduction schedule less financially detrimental to that employee. I.R. No. 2020-15, at 10. We find that the Designee's belief that under those specific circumstances the State's unilateral action did not have a tendency to irreparably undermine or chill the negotiations process, *id.*, was not unreasonable, certainly not to the extraordinary or exceptionally-important extent necessary to warrant reconsideration by the full Commission.

Regardless, that is not the sole measure of irreparable harm in this case. "Harm is generally considered irreparable in equity if it cannot be redressed adequately by monetary damages" which "may be inadequate because of the nature of the injury or

---

<sup>1/</sup> On December 23, 2019, the CSC denied the employee's request for a waiver of the overpayment recoupment action, finding the required bi-weekly recoupment pay would not create a hardship to V.A. and directing a reasonable and, if necessary, lenient repayment schedule to be set by the State and V.A.. In its brief in support of its interim relief request, STNCOA noted that it was neither aware of nor participated in V.A.'s request for a waiver of the overpayment before the CSC.

of the right affected.” Crowe v. DeGioia, 90 N.J. 126, 132-133 (1982); Town of Boonton, I.R. No. 2020-1, 46 NJPER 30 (¶9 2019). Here the Designee noted, “Any financial detriment to [V.A.] would be fully remunerated to him in the aggregate, if and when STNCOA prevails at the conclusion of the pending unfair practice charge or more likely, the grievance arbitration process.” I.R. No. 2020-15, at 10. We add that V.A. also had a right to appeal the CSC’s final decision affirming the need for recoupment to the Appellate Division and the STNCOA has indicated that such an appeal was filed.<sup>2/</sup>

Finally, the moving party must satisfy all of the Crowe factors in order to obtain interim relief. Essex Cty., P.E.R.C. No. 2005-56, 31 NJPER 103, 106 and n.2 (¶45 2005). Where there is a dispute over material facts, interim relief is properly denied because the charging party will not have met its burden of showing that it has a substantial likelihood of success on the merits of its charge. North Hudson Reg. Fire and Rescue, P.E.R.C. No. 2008-61, 34 NJPER 113 (¶48 2008). We find that a grant of interim relief would be inappropriate here because material facts are in dispute. Specifically, the Designee noted that in opposing the STNCOA’s application for interim relief the State, among other things, claimed that it “attempted to engage in good faith negotiations, but STNCOA unilaterally rejected

---

<sup>2/</sup> STNCOA’s Reply Br., at 5.

those efforts by filing a grievance and [this] unfair practice charge and application." I.R. No. 2020-15, at 4. (See also, State's Br. Opposing Interim Relief at 9-10.) This claim is material to a final determination of whether the State committed an unfair practice, and was disputed by the STNCOA, in its unfair practice charge as well as its briefs and certification in support of interim relief. (See, Addendum to UPC, ¶¶28-29; Stilianessis Cert., ¶¶28-30; STNCOA's Br. in Support of Interim Relief at 6-7; STNCOA's Reply Br. at 10).

Therefore, both the existence of disputed material facts as well as STNCOA's failure to establish irreparable harm supported the Designee's denial of interim relief. We find no basis to grant the STNCOA's motion for reconsideration.

ORDER

The STNCOA's motion for reconsideration is denied.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Ford, Papero and Voos voted in favor of this decision. Commissioner Jones opposed.

ISSUED: June 25, 2020

Trenton, New Jersey