

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MONMOUTH COUNTY,

Respondent,

-and-

Docket No. CO-2020-304

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies the County of Monmouth's motion for reconsideration of a Commission Designee's partial grant of interim relief to the Communications Workers of America, AFL-CIO, pending a final decision on its unfair practice charge that the County violated the New Jersey Employer-Employee Relations Act by unilaterally establishing policies requiring unit employees, who were potentially exposed to COVID-19 or recently traveled to states with significant community spread of the disease, to report to work during their quarantine period; and temporarily restraining the County from requiring employees to report to work during their quarantine period because the County previously determined it was feasible to allow those positions to work from home. The County repeated arguments it made to the Designee, and failed to explain specifically how its interests in providing essential services would be thwarted by the Designee's grant of partial interim relief, in the absence of evidence in the record showing why compliance with the Designee's order was not feasible. The Commission finds the County failed to establish extraordinary circumstances warranting reconsideration, and presented no compelling reason to disturb the Designee's decision.

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, Monmouth County (Steven W.
Kleinman, In House Counsel)

For the Charging Party, Weissman and Mintz, attorneys
(Ira W. Mintz, of counsel)

DECISION

On August 28, 2020, the County of Monmouth (County or Respondent) moved for reconsideration of I.R. NO. 2021-4, 47 NJPER 116 (§29 2020). In that decision, a Commission Designee granted in part the request of Communications Workers of America, AFL-CIO, (CWA or Charging Party) for interim relief pending a final decision on its unfair practice charge against the County, on a charge that the County violated subsections 5.4a(1) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A.

1/ These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (5) Refusing to
(continued...)

34:13A-1, et seq. (Act), by unilaterally establishing policies that required negotiations unit employees in the County's Department of Human Services, Division of Social Services (DSS), who were potentially exposed to COVID-19 or recently traveled to states with significant community spread of the disease, to report to work during their quarantine period. The Designee's decision also left intact temporary restraints against the County from requiring unit employees, in positions that were previously permitted to perform work at home during the COVID-19 Public Health Emergency, to report to work during their quarantine period pursuant to those policies.

The charge, as amended, alleges that the County violated the Act by failing to negotiate over terms and condition of employment^{2/} regarding: 1) the County's unilateral adoption, on

1/ (...continued)
negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

2/ The CWA's amended charge also included an allegation, later withdrawn, that the County violated the Act through its unilateral adoption, on or around April 20, 2020, of the Monmouth County Revised COVID-19 Policy (COVID-19 Policy), which identified all employees in its Division of Social Services as emergency responders, and through its refusal to negotiate over its decision to exempt these employees from the expanded leave benefits made available under the federal statute, the Families First Coronavirus Response Act (FFCRA). After the County permitted the remaining employees with childcare issues to work remotely, the CWA, in its June
(continued...)

or around June 5, 2020, of the Monmouth County Sick Leave Call-Out Policy (COVID-19 Sick Leave Policy), which included a requirement that employees who have been exposed to COVID-19 "quarantine at work" so long as the exposed employees do not experience certain symptoms and follow particular safety protocols while at work; 2) the County's unilateral adoption, on or around July 9, 2020, of the Monmouth County COVID-19 Travel Quarantine Policy (COVID-19 Travel Quarantine Policy), which requires employees to quarantine at work if they have traveled to certain states with significant community spread of COVID-19, or use accrued leave time to remain at home during the quarantine period.

Following an extensive procedural history that included oral argument, the parties' submission of multiple briefs, certifications and exhibits, and the issuance on July 30, 2020 of a temporary restraining order (TRO), the Designee issued an Interlocutory Decision on August 13, granting in part the CWA's application for interim relief pursuant to N.J.A.C. 19:14-9.5(a), and transferring the case to the Director of Unfair Practices for further processing. Pending a final agency decision, the Designee: 1) ordered the County to negotiate in good faith with the CWA regarding health and safety issues related to its

2/ (...continued)
30, 2020 reply brief, advised the Designee that it was withdrawing its request for interim relief on that issue.

requirement that unit employees report to work during their 14-day quarantine period; and 2) left intact temporary restraints against requiring those unit employees who were in positions that were previously permitted to perform work at home during the declared Public Health Emergency due to COVID-19, and who may have been potentially exposed to COVID-19 or traveled to states with significant community spread as identified by the State of New Jersey's travel advisory, to report to work during their 14-day quarantine period. I.R. No. 2021-4, at 56.

The Designee found that CWA met the standard for a grant of interim relief under Crowe v. De Gioia, 90 N.J. 126, 132-34 (1982), in that it demonstrated a reasonable probability of prevailing on the merits, irreparable harm would occur if the requested relief was not granted, the public interest would not be harmed by the interim relief granted, and the relative hardships weighed in favor of granting the requested relief in part.

Addressing CWA's likelihood of success on the merits, the Designee found that the subject matter in dispute met the first two requirements of mandatory negotiability set forth in In re Local 195, IFPTE v. State, 88 N.J. 393, 404-05 (1982) (Local 195), in that the quarantine-at-work provisions in the County's COVID-19 Sick Leave and Travel Quarantine policies intimately and directly affect the work and welfare of public employees because

they involve employee health and safety in the workplace, and negotiation over those subjects is not preempted by statute or regulation. I.R. No. 2021-4, at 40-41. The Designee concluded that the negotiability of the dispute turns on the third prong of the Local 195 test, that is, whether a negotiated agreement would significantly interfere with the determination of government policy, which required the Designee to undertake a balancing of the parties' interests. I.R. No. 2021-4, at 41. In doing so, the Designee found the balancing of the interests weighs in CWA's favor, after thoroughly considering both sides' arguments, all the evidence presented, and applicable law and precedent. Id. at 42-52.

Critical to that determination are the following facts: 1) the County certified that it has previously, "whenever feasible, provided a telework option for DSS employees, including many who have claimed that they would have difficulty reporting to the workplace for childcare-related reasons"^{3/}; and 2) the County did not require any unit employees to quarantine at work, regardless of their classification as emergency responders, from April 20

3/ CWA also certified that a DSS employee holding the HSS2 title was working from home via VPN access and processing NJFC Medicaid before the County's COVID-19 Sick Leave Policy, until being contacted by the health department and informed that she was exposed to a person who was presumptive positive for COVID-19, when she was then required to quarantine at work and was no longer permitted to work from home. I.R. No. 2021-4, at 18-19.

through June 5, 2020, pursuant to the County's April 20 COVID-19 Policy^{4/} (which preceded the COVID-19 Sick Leave and Travel Quarantine policies), as confirmed by County counsel during oral argument. I.R. No. 2021-4, at 30 (quoting O'Connor Cert., para. 21), and at 9-10 and n.4.

The Designee found, based on the above-noted evidence among other things, that "the County had already determined that it was feasible for some DSS employees to perform work at home during the public health emergency." I.R. No. 2021-4, at 43. In light of that feasibility determination, the degree of interference with the County's legitimate efficiency and productivity interests, posed by negotiations over where potentially exposed employees spend their quarantine period, was found to be "slight, especially when weighed against CWA's asserted safety interest in seeking to minimize COVID-19 transmission in the workplace." Id. at 44. The Designee further noted that the County did not claim that its backlog of cases was exacerbated because of its prior decision to let some DSS employees telework, and it failed to "adequately explain how negotiations over a telework option for unit employees would significantly interfere with its

^{4/} The April 20 Covid-19 policy further provided that "[i]n the event of staffing shortages that disrupt the usual delivery of County services due to diagnosis and/or necessity of quarantine, it may become necessary for appropriate County officials to reassign essential work duties to ensure continuity of operations." I.R. No. 2021-4, at 10.

determination of policy during a public health emergency when it previously provided such an option.” Id. The Designee further found that evidence provided by the County, including state and federal guidance it consulted in drafting its policies, “establish[ed] that ‘quarantining at work’ is less safe than remaining at home,” noting the NJ Return to Work Protocol’s first requirement for essential personnel returning to work “is not whether employees are asymptomatic but that working from home is not feasible.” I.R. No. 2021-4, at 52.

The Designee found a likelihood of irreparable harm despite employees having the option to remain at home using accrued leave time, because legitimate health and safety risks still exist if they decide to return to work during the quarantine period to protect their leave time, an issue that will not be able to be redressed if the public health emergency is over before a hearing occurs and a final decision is rendered. I.R. No. 2021-4, at 52.

The Designee found the public interest is advanced, not damaged, by CWA “seeking to improve upon the standards the County put in place in response to the public health emergency and create a safer workplace, . . . particularly where members of the public may need to enter those workplaces to access important services.” Id., at 53.

Finally, the Designee concluded the relative hardships weighed in favor of granting relief in part, to prevent an

increased risk of COVID-19 transmission if potentially exposed employees reported to work during their quarantine period. The Designee found speculative the County's claim that a grant of interim relief would likely decimate its workforce, given that it did not also claim the workforce was decimated when unit employees remained at home during their quarantine period under its COVID-19 policy; which also provided for the reassignment of work duties to ensure continuity of operations if necessary to address staffing issues "due to diagnosis and/or necessity of quarantine." I.R. No. 2021-4, at 52-54. The Designee added that the County could protect its interests in efficiency, productivity and avoiding abuse of leave in other ways, such as by exercising managerial prerogatives like discipline. Id.

The County filed a motion for reconsideration by the full Commission together with a request for a stay of interim relief on August 28, 2020, and an amended stay request on September 8. CWA filed a response to the motion for reconsideration on September 3, and a response to the stay request on September 15. The Chair denied the stay request on September 16.

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." 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.]

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 Bergen Cty., P.E.R.C. No. 2019-20, 45 NJPER 208 (¶54 2018), denying recon. I.R. No. 2019-6, 45 NJPER 123 (¶33 2018); and Union Tp., P.E.R.C. No. 2002-55, 28 NJPER 198 (¶33070 2002), denying recon. I.R. No. 2002-7, 28 NJPER 86 (¶3031 2001).

Applying these standards here, we find that the County has failed to establish extraordinary circumstances warranting reconsideration of the Designee's decision granting partial interim relief. The County urges that the decision "threatens the ability of the County to provide essential services to the public", does not account for its need "to be nimble in the face of ever-shifting and unique circumstances as to how it will utilize its essential personnel" and adapt to "frequent changes

in federal and state policy guidance;" and no evidence in the record "compel[s] a conclusion that every employee in a particular Civil Service title at DSS is completely interchangeable or that each task a particular employee is trained to perform can be accomplished at home." (County's Br. at 2 and 5.) The County made similar arguments to the Designee. In support of reconsideration, the County again does not explain specifically how those interests would be thwarted by the Designee's grant of partial interim relief, which applies restraints against the County's quarantine-at-work policy only as to those unit employees who were in positions that it previously permitted to work from home during the COVID-19 Public Health Emergency.

The County faults the Designee for assuming it has the ability to "set up a process for [a] particular employee to begin working from home, . . . the proper equipment to do so, the proper skills and training to do so, or . . . work that can be arranged to be performed at home given that employee's particular work assignment." (County's Br. at 7.) Yet the County offers no concrete examples, and points to no evidence in the record, showing why those things are not feasible. If the County is in possession of such specific information, it could have, and should have, presented it to the Designee. Bergen Cty., Union Tp., supra. The County does not point to any evidence in the

record that was not carefully considered by the Designee. Her Decision does not, in any case, prevent the County from making determinations with respect to the feasibility of allowing other essential employees to work from home during their quarantine periods, who were not previously allowed to do so during the COVID-19 Public Health Emergency.

Accordingly, we find no compelling reason to disturb the Designee's decision and intrude into the regular interim relief process. This case is referred back to the Director of Unfair Practices for processing in the normal course.

ORDER

The County of Monmouth's motion for reconsideration is denied.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Ford and Papero voted in favor of this decision. Commissioner Voos recused herself. Commissioner Jones abstained from consideration.

ISSUED: November 12, 2020

Trenton, New Jersey