

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PATERSON,

Respondent,

-and-

Docket No. CO-2021-069

PATERSON POLICE PBA LOCAL 1 AND  
PATERSON POLICE PBA LOCAL 1 SUPERIOR  
OFFICERS ASSOCIATION,

Charging Parties.

SYNOPSIS

The Public Employment Relations Commission denies the City's motion for reconsideration of a Commission Designee's decision granting partial interim relief to the PBA and SOA on its unfair practice charge against the City. The City challenged the Designee's order restraining the City, pending resolution of the unfair practice charge, from unilaterally closing the police gym and relocating the exercise equipment to the men's locker room. The Commission finds that the Designee applied the appropriate analysis on the negotiability of employee use of physical facilities and that she concluded the City does not have a managerial prerogative to unilaterally close the current gym location after balancing the interests of the PBA and SOA in maintaining use of gym space that they had negotiated for against the City's interest in using the gym space for police operations. The Commission holds that the City failed to establish extraordinary circumstances warranting reconsideration of the Designee's interim 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.

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PATERSON,

Respondent,

-and-

Docket No. CO-2021-069

PATERSON POLICE PBA LOCAL 1 AND  
PATERSON POLICE PBA LOCAL 1 SUPERIOR  
OFFICERS ASSOCIATION,

Charging Parties.

Appearances:

For the Respondent,  
Adams Gutierrez and Lattiboudere, LLC, attorneys  
(Derlys M. Gutierrez, of counsel)

For the Charging Parties,  
Shaw, Perelson, May & Lambert, LLP, attorneys  
(Mark C. Rushfield, of counsel)

DECISION

On February 24, 2021, the City of Paterson (City) moved for reconsideration of I.R. No. 2021-19, issued January 21, 2021. In that decision, a Commission Designee granted in part the request of the Paterson Police PBA Local 1 (PBA) and Paterson Police PBA Local 1 Superior Officers Association (SOA) for interim relief pending a final decision on its unfair practice charge against the City. The charge alleges that the City violated subsections 5.4a(1), (2), and (5)<sup>1/</sup> of the New Jersey Employer-Employee

---

<sup>1/</sup> These provisions prohibit public employers, their  
(continued...)

Relations Act, N.J.S.A. 34:13A-1, et seq. (Act), by: 1)

continuing to deduct PBA dues for Police Chief Michael Baycora (Chief Baycora) and refusing to produce the PBA payroll deduction roster from August 1, 2020 through September 4, 2020; 2) failing to produce minutes of an August 20, 2020 meeting taken by a member of the Chief's office; 3) changing the license plate on the City owned vehicle assigned to PBA President Cruz; 4) unilaterally determining to repurpose the office space located within the City's Public Safety Complex that has been used as the police gym since 2011 when Chief Baycora instructed that the exercise equipment in the police gym be moved into the men's locker room no later than November 9, 2020; and 5) unilaterally modifying terms and conditions of employment when on October 1, 2020 Chief Baycora declared that PBA President Cruz and SOA President Maher were not permitted to speak to anyone within his office without his permission.

As the parties' most recent collective negotiations agreements expired on July 31, 2019, the charge alleges that the

---

1/ (...continued)  
representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (5) Refusing to 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."

unilateral changes occurred during collective negotiations for the parties' successor agreements.

The Designee granted interim relief on the allegations concerning Chief Baycora's unilateral plan to close the police gym and relocate the exercise equipment and Chief Baycora's directive to Cruz and Maher concerning their access to and communications with their members within his office. I.R. No. 2021-19 at 17-23. The Designee denied interim relief on the remaining allegations in the charge. Id. at 23-28. The Designee's Order regarding the police gym stated: "[T]he City is restrained from unilaterally closing and vacating the police gym in its present location in the City's Public Safety Complex." Id. at 28.

The City's motion for reconsideration contests only the grant of interim relief regarding the closure of the current police gym location and the relocation of the gym equipment to the men's locker room. The City asserts that it has a managerial prerogative to relocate the gym equipment to the men's locker room in order to efficiently allocate limited space for police operations. It argues that the need for additional space within police headquarters is critical during the coronavirus (COVID-19) pandemic to accommodate requirements and recommendations for social distancing. The City also asserts that Chief Baycora met with the PBA and SOA Presidents several times about the move and

that they verbally agreed to move the gym equipment within the requested timeframe.

The PBA and SOA (Charging Parties) assert that the City is using the motion for reconsideration to reiterate arguments it already made before the Designee. The Charging Parties argue that the City did not have a managerial prerogative to order the closure of a gym that was established as a result of the parties' negotiations in 2011. They contend that the record and Designee's decision show that an August 6, 2020 letter from the PBA and SOA Presidents to Chief Baycora makes clear that there was no agreement by the PBA and SOA to move the gym equipment to the men's locker room.

A motion for reconsideration may be granted only where the moving party has established "extraordinary circumstances."

N.J.A.C. 19:14-8.4. 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 City has failed to establish extraordinary circumstances warranting reconsideration of the Designee's decision granting interim relief on the police gym relocation issue.

The Designee's analysis of the police gym relocation issue included a review of Commission and judicial precedent on the issue of physical facilities for employees related to employee convenience. I.R. No. 2021-19 at 18-19. Such issues involving employee use of physical facilities are terms and conditions of employment that are generally mandatorily negotiable to the extent they do not require the employer to make a capital expenditure and do not significantly interfere with the exercise of managerial prerogatives. See, e.g., In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 28-29 (App. Div. 1977). After considering the City's interest in using the police gym as additional space for police operations against the PBA's and

SOA's interests in maintaining their negotiated gym space that they had paid to renovate and furnish, the Designee concluded that the City does not have a managerial prerogative to unilaterally close the current police gym location. I.R. No. 2021-19 at 17-20.

The Designee proceeded to apply the requisite Crowe v. De Gioia, 90 N.J. 126 (1982) interim relief analysis, determining that the Charging Parties demonstrated irreparable harm and that the relative hardship to the parties and the public interest weigh in their favor. I.R. No. 2021-19 at 17-20.

The City's motion for reconsideration reiterates its arguments before the Designee. We find no indication that the Designee misunderstood the factual record or the parties' arguments regarding the gym closure and equipment relocation issue. Accordingly, we find that the City has not demonstrated extraordinary circumstances warranting reconsideration or exceptional importance justifying the Commission's intrusion into the regular interim relief process.

#### ORDER

The City of Paterson's motion for reconsideration is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: March 25, 2021

TRENTON, NJ