

P.E.R.C. NO. 2022-11

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MORRIS COUNTY COLLEGE
FACULTY ASSOCIATION,

Respondent,

-and-

Docket No. CE-2021-011

COUNTY COLLEGE OF MORRIS,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies the College's motion for reconsideration of a Commission Designee's denial of its request for interim relief, pending a final decision on its unfair practice charge alleging that the Association violated the New Jersey Employer-Employee Relations Act by sending the College President a threatening e-mail after the College non-renewed several faculty members, trespassing on and damaging his personal property, posting lies about him on social media, and requesting to "follow" his children on social media. The Commission finds that the Designee reasonably determined that the factual record thus far does not support a finding that the College has a substantial likelihood of success and therefore did not satisfy the interim relief standards. The Commission also finds that there are several disputes of material fact, acknowledged by the College in its brief, that preclude interim relief. Accordingly, the Commission holds that the College has failed to establish extraordinary circumstances or exceptional importance warranting reconsideration.

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, Oxfeld Cohen, P.C., attorneys
(William P. Hannan, of counsel)

For the Charging Party, Bressler Amery & Ross, P.C.,
attorneys (Jed L. Marcus, of counsel)

DECISION

On July 2, 2021, the County College of Morris (College) moved for reconsideration of I.R. No. 2021-29, 48 NJPER 61 (¶16 2021). In that decision, a Commission Designee denied the College's application for interim relief and dissolved temporary restraints he had issued on May 26, 2021. The College filed an unfair practice charge and application for interim relief against the Morris County College Faculty Association (Association) on May 24, 2021. The charge alleges that the Association violated the New Jersey Employer-Employee Relations Act (Act), N.J.S.A.

34:13A-1 et seq., specifically subsections 5.4b(2) and (3)^{1/}, by sending College President Anthony Iacono (Iacono) a threatening e-mail after the College non-renewed seven non-tenured faculty members, trespassing onto Iacono's property and damaging personal property, posting lies about Iacono on social media in an attempt to get him fired, requesting to "follow" Iacono's children on social media sites, and using the College's Blackboard platform to contact students and spread lies about Iacono.

The Designee found that the College did not meet the standard required for interim relief under Crowe v. De Gioia, 90 N.J. 126 (1982), because it failed to demonstrate a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations.^{2/} Specifically, the Designee found that the record did not establish that Iacono is the

1/ These provisions prohibit employee organizations, their representatives, or agents from: "(2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustments of grievances." and "(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit."

2/ To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe at 132-134.

College's representative for purposes of collective negotiations and adjustment of grievances, but even if he were, the Designee found:

- The Association's April 16, 2021 e-mail contains nothing threatening but only seeks reconsideration of the College's non-renewal decisions;
- The facts, including the police report, surrounding the alleged trespass and property damage at Iacono's home do not support the College's claim that the Association had anything to do with the incident or that it occurred at all;
- The Association's social media posts criticizing Iacono are public expressions of its views about labor relations issues, which are protected activity under the Act; and
- The mere social media "follow" requests made by the Association do not support a finding of harassment, surveillance, or interference in violation of the Act.

The Designee further found that the subject matter of the Association's communications with students was protected activity and even if they violated the College's policies or CNA, the College failed to show a nexus between the e-mails and the parties' negotiations process in violation of the Act.

In support of its motion for reconsideration, the College asserts that "this case is of exceptional importance because it involves a question that has not previously been resolved by the Commission" regarding harassment or the impression of surveillance through social media. The College disputes the Designee's finding that Iacono is not the College's representative for purposes of collective negotiations and grievances. The College argues that the Association's April 16

e-mail to Iacono was threatening in the context of the alleged vandalism at his home and that the social media "follow" requests violate the Act by creating the impression of surveillance.

In opposition to the motion for reconsideration, the Association asserts that this is not a case of exceptional importance and that the Designee neither misunderstood the facts nor misapplied the law. The Association argues that because the College's claim is based on unsettled law, it cannot demonstrate a likelihood of success on the merits. The Association asserts that the College is also unable to demonstrate a likelihood of success because there are disputed facts and the College's motion "is based solely on its unreasonable 'interpretation' of various correspondence and events."

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); Union Tp., P.E.R.C. No. 2002-55, 28 NJPER 198 (¶33070 2002).

Applying these standards here, we find that the College has failed to establish extraordinary circumstances or exceptional importance warranting reconsideration of the Designee's decision denying interim relief. The College's motion largely repeats arguments raised before the Designee and does not demonstrate that the Designee misunderstood the facts or the College's arguments. The Designee applied the requisite Crowe interim relief standards and analyzed the College's allegations and the factual record in the context of relevant Commission precedent concerning 5.4b(2) and (3) charges. I.R. No. 2021-29 at 7-13. The Designee reasonably determined that the factual record thus far does not support a finding that the College has a substantial likelihood of success on the merits of its unfair practice charge. We note that the moving party has the burden of establishing each of the Crowe factors by clear and convincing evidence. Garden State Equality v. Dow, 216 N.J. 314, 320 (2013).

The College's own submission in support of its motion clearly reveals that there are material facts in dispute regarding: whether Iacono is the College's representative for purposes of collective negotiations and adjustment of grievances; whether the Association's April 16, 2021 e-mail was threatening; whether the Association engaged in vandalism; and whether the social media "follow" requests established a violation of the Act. These facts are material and appear to require an evidentiary hearing for resolution. Due to these disputes of material fact, the charging party cannot meet its burden of showing that it has a likelihood of success on the merits of its charge and interim relief is properly denied. See NJ/State (Dept. of Law and Public Safety), P.E.R.C. No. 2020-62, 47 NJPER 41 (¶8 2020); North Hudson Reg. Fire and Rescue, P.E.R.C. No. 2008-61, 34 NJPER 113 (¶48 2008).

Based upon the above, we find that the College has not established extraordinary circumstances or exceptional importance which would warrant reconsideration of the Designee's denial of interim relief. This case is referred back to the Director of Unfair Practices for processing in the normal course.

ORDER

The County College of Morris' motion for reconsideration is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: September 30, 2021

Trenton, New Jersey