

P.E.R.C. NO. 2023-28

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Respondent,

-and-

Docket No. CO-2023-064

JERSEY CITY INTERNATIONAL ASSOCIATION
OF FIREFIGHTERS LOCAL 1066,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies the IAFF's motion for reconsideration of a Commission Designee's interim relief decision denying the IAFF's request for interim relief. The IAFF's unfair practice charge alleges that the City violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4a(1) through (7), by unilaterally eliminating automatic payroll deductions for a series of voluntary benefit plans, including disability and life insurance plans, and subsequently, automatically enrolling employees in newly established voluntary benefit plans. The Commission finds that that the IAFF's charge alleging that the City failed to negotiate over the elimination of automatic payroll deductions and replacement of carriers for voluntary benefits plans does not constitute extraordinary circumstances nor is this a case meeting the standard of exceptional importance, which warrants reconsideration of the Designee's decision. The Commission agrees with the Designee's finding that the IAFF has failed to establish the irreparable harm required for the granting of interim relief.

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, Apruzzese, McDermott, Mastro &
Murphy, P.C., attorneys (Arthur R. Thibault, of
counsel)

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

DECISION

On November 30, 2022 the Uniformed Fire Fighters Association of Jersey City, I.A.F.F., Local 1066 (IAFF) moved for reconsideration of I.R. No. 2023-6, 49 NJPER 263 (¶60 2022), wherein a Commission Designee denied the IAFF's application for interim relief. The IAFF filed its request for interim relief in conjunction with its unfair practice charge (UPC), Docket No. CO-2023-64, against the City of Jersey City (City) on October 20, 2020, alleging that the City violated the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq.,

specifically subsections 5.4a(1), (2), (3), (4), (5), and (7),^{1/} by unilaterally eliminating automatic payroll deductions for a series of voluntary benefit plans, including disability and life insurance plans, and subsequently, automatically enrolling employees in newly established voluntary benefit plans.

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.]

^{1/} The Designee's decision only addressed the 5.4a(1) and (5) alleged violations because she found the facts only implicated those provisions of the Act. Those 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" and "(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."

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 IAFF has failed to establish extraordinary circumstances and that this is not a case of exceptional importance, warranting reconsideration of the Designee's decision denying interim relief.

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 v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

Here, the Designee found that the IAFF did not meet the standard required for interim relief under Crowe, in that material factual disputes existed which precluded a finding that

the IAFF had demonstrated a substantial likelihood of prevailing on the merits of its UPC and that the IAFF failed to establish irreparable harm would occur absent interim relief. The Designee found that there were disputed facts as to whether a change in a working condition had actually occurred, namely whether the IAFF factually established that the automatic payroll deductions for the previous plans had actually been eliminated or whether the unit members had been automatically enrolled in the new voluntary benefits plan. The Designee concluded that these factual disputes prevented IAFF from showing a substantial likelihood of success that the City changed a working condition without negotiations in violation of the Act. Further, the factual dispute regarding whether a change in working conditions had actually occurred also prevented the IAFF from establishing irreparable harm because the IAFF did not show that its members experienced a gap in coverage, and if so, to what extent. Lastly, the Designee found that the IAFF could not establish irreparable harm to the parties' negotiations for a successor CNA because a factual dispute exists as to whether the parties are currently in contract negotiations, as the parties are under an MOA that is in effect until December 31, 2024.

In its motion for reconsideration, the IAFF argues that the Designee's statement of the issues and subsequent analysis was palpably incorrect and that she relied on non-evidentiary statements and ignored certified evidence. The IAFF argues that

the Designee erred in finding that the IAFF failed to establish a substantial likelihood of success on the merits because it was unclear whether a change in a working condition had actually occurred. The IAFF maintains that the City's announcement of the unilateral change itself was undisputed and factually established a change in a mandatorily negotiable condition of employment.

The IAFF further argues that the Designee erred in not finding that irreparable harm will result if the interim relief is denied. The IAFF maintains that no amount of monetary damages can cure the elimination of the automatic payroll deduction benefit enjoyed by its members. It further claims that compelled enrollment in the new plans is also irreparable harm. Further establishing irreparable harm, the IAFF asserts that the City's September 28 notice of the policy change states that there will be a gap in coverage from 10/1/22 to 11/2/23, which undermines the alleged factual dispute over whether its members suffered a gap in coverage. Lastly, the IAFF argues that there has been irreparable harm to the parties' ongoing negotiation process as a result of the chilling effect on negotiations from the City's unilateral policy change and failure to provide the IAFF with requested documents and information regarding the voluntary benefits plans.

The Commission has held that both disability insurance benefits and payroll deduction procedures for employee benefits are mandatorily negotiable. Berkeley Tp., P.E.R.C. No. 2023-7,

49 NJPER 181 (§42 2022). Further, both the announcement and the implementation of a unilateral change are separate unfair practices. See City of Orange Tp. P.E.R.C. No. 2022-52, 49 NJPER 65 (§13 2022) (internal citations omitted) (finding an announcement that the City was unilaterally rescinding a mandatorily negotiable term and condition of employment constituted an unfair practice).

Here, we find that the IAFF's argument regarding the announcement of the City's policy change being an independent basis for a UPC was not raised to the Designee. 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). The IAFF's argument to the Designee, and her resulting decision, focused on whether the IAFF's members actually experienced the elimination of the payroll deductions, a gap in coverage, or any other loss of benefits, which the Designee found were disputed material facts that barred granting interim relief.

Even if the IAFF could establish a substantial likelihood of success based on the City's announcement of the policy change, the establishment of irreparable harm is still lacking. Irreparable harm is harm that cannot be remedied at the

conclusion of a final Commission determination. State of New Jersey (Kean University), I.R. No. 2019-2, 45 NJPER 61 (¶17 2018). The Designee correctly found that the record was unclear whether the IAFF members suffered any gap in coverage. The certification of President Krajnik cited by the IAFF in support of its reconsideration motion states that IAFF members were notified of the City's policy change and that change would have an adverse effect on established working conditions. However, the certification does not establish whether the IAFF members suffered harm, either through a lapse of coverage or a change in level of benefits. It is unclear whether the "gap" referred to in the City's September 28 notice is an actual gap in coverage or a period during which payment must be made directly to the carrier to continue coverage. We also agree with the Designee's finding that the IAFF has not established irreparable harm to the parties' negotiations because the parties are still under an MOA which extended the current CNA until December 2024.

In sum, we find that the IAFF's charge alleging that the City failed to negotiate over the elimination of automatic payroll deductions and replacement of carriers for voluntary benefits plans does not constitute extraordinary circumstances nor is this a case meeting the standard of exceptional importance. The IAFF's motion for reconsideration is denied, and this charge shall be processed in the normal course.

ORDER

The IAFF's motion for reconsideration is denied. The charge is referred to the Director of Unfair Practices for further processing.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Ford, Papero and Voos voted in favor of this decision. None opposed. Commissioner Bonanni was not present.

ISSUED: January 26, 2023

Trenton, New Jersey