

P.E.R.C. NO. 2024-43

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF NUTLEY,

Respondent,

-and-

Docket No. CO-2022-207

INTERNATIONAL ASSOCIATION OF
EMTs AND PARAMEDICS (IAEP), LOCAL R2-806,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies the Township's motion for reconsideration of P.E.R.C. No. 2024-32, 50 NJPER 309 (¶75 2024), where the Commission denied the Township's motion for summary judgment on an unfair practice charge filed by the Local. The unfair practice charged alleged that the Township violated the Act by refusing to sign and execute a collective negotiations agreement (CNA) after the Local adopted and signed a tentative agreement reached by the parties' negotiating teams. The Commission denied the Township's motion for summary judgment because it found there were disputed material facts and that a summary dismissal would be premature before a factual record can be further developed by a hearing examiner. In its motion for reconsideration, the Township claims the Local's requested remedy for the UPC is extreme and has not been endorsed by the Commission. The Commission finds that the Township has not met the standard for reconsideration because the issue of whether a particular remedy is appropriate is premature, as the Hearing Examiner has not conducted and issued a decision setting forth legal and factual conclusions.

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, Antonelli Kantor Rivera, attorneys
(Lawrence M. Teijido, of counsel)

For the Charging Party, IAEP, Local R2-806 (Frank
Wagner, IAEP National Representative)

DECISION

On February 9, 2024 the Township of Nutley (Township) moved for reconsideration of P.E.R.C. No. 2024-32, 50 NJPER 309 (¶75 2024), where the Commission denied the Township's motion for summary judgment on an unfair practice charge (UPC) filed by IAEP, Local R2-806 (Local R2-806). The UPC alleged that the Township violated the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., by refusing to sign and execute a collective negotiations agreement (CNA) after Local R2-806 adopted and signed a tentative agreement reached by the parties' negotiating teams.

Reconsideration will only be granted based on the movant's

demonstration of "extraordinary circumstances warranting reconsideration." N.J.A.C. 19:14-8.4. 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). See also, Mercer County Sheriff's Office, P.E.R.C. No. 2017-15, 43 NJPER 114 (¶33 2016); In re Toolen, P.E.R.C. No. 2018-36, 44 NJPER 329 (¶94 2018). Applying these standards here, we find that the Township has failed to establish extraordinary circumstances warranting reconsideration of the Commission's decision.

Here, the Commission found that the factual record^{1/} in the Township's summary judgment motion did not contain undisputed facts that would be material to a determination of whether the Township violated 5.4a(5) or, derivatively, 5.4a(1)^{2/}, by its

^{1/} We rely on the factual record as presented in P.E.R.C. No. 2024-32 at 4-7.

^{2/} 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 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."

refusal to ratify the draft CNA at issue. Thus, we decided that a summary dismissal would be premature before a factual record can be further developed by a hearing examiner. The Commission further rejected the Township's mootness argument, namely that the issue of ratification of the CNA was moot because the affected employees' positions had been eliminated. We found that the Township's termination of those employees' positions does not negate the negotiability of their terms and conditions of employment while they were in the Township's employ. Thus, we remanded the UPC for a hearing to establish the facts and resolve the disputed issues.

In its motion for reconsideration, the Township argues that the Commission's decision erred in ignoring subpart (d) of the Township's motion for summary judgment, where it argued the following, in pertinent part:

... the Township respectfully requests an Order granting Summary Decision limiting the remedy sought by Local R2-806. In that regard, Local R2-806's Charge seeks relief in the form of the Commission requiring the Township's Board of Commissioners to execute a supposed tentative agreement and provide retroactive compensation. The remedy requested by Local R2-806 is extreme and has not been endorsed by the Commission.

Thus, the Township argues that the Commission's decision denying the summary judgment motion must be reconsidered because it did not properly address whether the Township can be ordered to execute the tentative agreement as a remedy.

Here, the issue of whether a particular remedy is appropriate is premature, as the Hearing Examiner has not conducted an evidentiary hearing and issued a decision setting forth legal and factual conclusions. We will not speculate what remedy may be appropriate if the Hearing Examiner finds the Township has violated the Act. See Hillsborough Tp., P.E.R.C. No. 2003-82, 29 NJPER 216 (¶64 2003) (rejecting township's argument in its motion for summary judgment on a UPC that there can be no remedy for the alleged violation because we will not speculate whether a particular remedy is appropriate.) The Township's reliance on Tenafly Bor., P.E.R.C. No. 98-129, 24 NJPER 230 (¶29109 1998) is misplaced. The Commission in Tenafly, following a Hearing Examiner's decision, found that the Borough violated the Act by misleading the union about whether a memorandum of agreement had been ratified. The Commission ordered the Borough to first vote on the memorandum of agreement rather than requiring ratification and execution of the CNA at issue. However, that remedy was fashioned after a hearing occurred, not prior to the hearing as the Township is requesting here. The Township will be left to its proofs at the hearing. If the Hearing Examiner finds the Township violated the Act and enters an order that the Township believes is unwarranted, the Township may file exceptions pursuant to N.J.A.C. 19:14-7.3.

ORDER

The Township of Nutley's motion for reconsideration is denied.

BY ORDER OF THE COMMISSION

Chair Hennessy-Shotter, Commissioners Eaton, Ford, Higgins, Kushnir and Papero voted in favor of this decision. None opposed. Commissioner Bolandi was not present.

ISSUED: March 28, 2024

Trenton, New Jersey