

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PATERSON,

Respondent,

-and-

Docket No. CO-2021-101

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

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies the City of Paterson's (City) motion for reconsideration of I.R. No. 2021-18 but modifies certain language in the temporary restraining order granted in that interim relief decision. In that decision, a Commission Designee ordered temporary restraints he had previously issued to remain in effect pending further disposition of the unions' unfair practice charge (UPC). The UPC alleges that the City violated the New Jersey Employer-Employee Relations Act (Act) when the City's Chief of Police (Chief) allegedly held captive audience meetings with bargaining unit members and made inappropriate comments for the purpose of direct dealing. The temporary restraints granted by the Designee prohibited, among other things, the Chief from engaging in communications with bargaining unit members in ways that could violate the Act. The Commission finds this case is not one of exceptional importance and extraordinary circumstances warranting a full reconsideration of the Designee's decision. The Commission finds that the Chief's undisputed statements amount to more than informing the officers of the City's negotiations position; his statements crossed over into direct dealing with the officers. The Commission's modified order ensures that the Chief does not hold captive audience meetings where he could make statements that can potentially undermine the unions' representation efforts, while at the same time not constraining him from communicating with his officers about terms and conditions of employment in a way that does not violate the Act.

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.

P.E.R.C. NO. 2021-39

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Appearances:

For the Respondent,  
Adams Guttierrez & Lattiboudere, LLC , attorneys  
(Derlys M. Guttierrez, of counsel)

For the Charging Parties,  
Shaw Perelson Nay & Labmert  
(Mark C. Rushfield, of counsel)

DECISION

On January 28, 2021, the City of Paterson (City) moved for reconsideration of I.R. No. 2021-18, which granted the interim relief request filed by the Paterson Police PBA Local 1 and Paterson Police PBA Local 1 Superior Officers Association (PBA, SOA or Charging Parties). In that decision, a Commission Designee ordered that the temporary restraints he issued on November 20, 2020 remain in effect pending further disposition of the Charging Parties' unfair practice charge (UPC). The Charging Parties' UPC alleges 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) and (5),<sup>1/</sup> when the City's Chief of Police, Ibrahim Michael Baycora (Baycora), allegedly held captive audience meetings with rank and file and superior officers and made inappropriate comments for the purpose of direct dealing with the PBAs' members. The Designee's temporary restraint Order set forth the following:

ORDERED that until further notice of the Commission, its designee or the Chairman, the Respondent City and its administrators, including its Chief of Police, is hereby restrained and enjoined from (1) communicating with rank and file and superior police officers, other than the Presidents of the Charging Parties or during collective negotiations (a) concerning the terms and conditions of employment of rank and file or superior police officers employed by the City's Police Department, including concerning the current collective negotiations between the City and the Charging Parties (b) referring to the Charging Parties or any of their union officers in a derogatory manner and (c) concerning the union activities of any rank and file or superior police officer, including but not limited to inquiring as to who attended union meetings of the Charging Parties or as to what was expressed at such meetings.

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<sup>1/</sup> 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"; (2) Dominating or interfering with the formation, existence or administration of any employee organization; 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."

The Designee's decision in I.R. No. 2021-18 detailed an extensive factual record submitted by the parties, which included the parties' briefs and multiple certifications from attendees of the various meetings at issue in this matter, including Baycora's certification. We incorporate the Designee's recitation of the facts as if they were reproduced herein, and summarize the facts pertinent to our analysis as follows.

The PBA represents all rank and file police officers in the City, and the SOA represents all superior officers in the City in the ranks of Sergeant, Lieutenant, Captain and Deputy Chief. The most recent collective negotiations agreements (CNAs) between the parties expired on July 31, 2019.

Baycora attended the October 27, 2020 joint negotiations session with the PBA and SOA as a member of the City's negotiating team. Captain Scott Eason certifies that at the negotiations session Baycora stated, among other things, that the PBAs' attorney uses the current collective negotiations as a tactic because it plays well at PERC; that the Charging Parties' presidents are in the position of being in dereliction of duty due to their flexible work hours; that he wanted past practice eliminated from the CNAs; that the past practice clause does not allow him to unilaterally change work hours; and that the CNAs' sick leave policy is too liberal and should be at his discretion.

On November 9, the PBA and SOA held a joint membership meeting. Baycora certifies that he learned that at that joint membership meeting his statements at the October 27 negotiations sessions were being misrepresented, and that he wanted to clarify his statements to the Charging Parties' members. Eason certifies that on November 10, Baycora visited a roll call meeting to address the rank and file officers and requested all superior officers to leave the meeting. Police Officer Michael Sisco certifies that at the meeting Baycora stated, among other things, that he wanted to "clear the air" regarding the parties' collective negotiations; that the officers' benefits and work schedule were safe; that the sick leave policy was being abused; that all officers were "eating well" under him and there were more overtime opportunities; and that there were some officers that should be fired, including naming a female officer that he claimed was brought back to her job due to his actions.

Eason further certifies that on November 11 Baycora again attended the roll call meeting. Eason certifies that he addressed the rank and file officers again, but did not ask the superior officers to leave the meeting. Eason certifies that Baycora asked the officers who among them had attended the November 9 PBA and SOA joint session meeting. Eason further certifies that he advised Baycora, at the meeting, that such a question was inappropriate. It appears, based on Eason's

certification, that Baycora did not pursue this question after he was advised of its inappropriateness. Eason certifies that Baycora continued to address the PBA and SOA members stating, among other things, that the union was lying about what he had said at the negotiations session; that he was not seeking to change the work schedule or sick time benefit; that, again, sick leave was being abused; that past practice was hindering his ability to effectively manage the police department; and that if the officers had any issues with what he had said they could meet with him privately.

Captain Shawn McIvor certifies that Baycora again attended the November 12 roll call meeting and addressed all officers in attendance. McIvor certifies that Baycora again stated that it was untrue he had said at the negotiations session that he wanted to take away the officers' benefits; that, again, "everybody is eating well"; that, again, the officers were receiving more overtime due to his efforts; and in general, that Baycora's statements were an attempt to undermine the union's representation of its members.

In response to the PBAs' certifications, Baycora certifies that he visited the two roll call meetings to clarify the opinions that he expressed at the October 27 negotiations session. He further certifies that the PBA had miscommunicated his statements to their memberships, and thus, he had a

legitimate and substantial business reason to clarify his position. Baycora certifies that at the roll call meetings:

- he did not make any threats or promise benefits;
- did not suggest that the City refused to negotiate in good faith;
- did not suggest that the City lacked desire to reach a successor CNA;
- did not interfere with the existence or administration of the PBA or SOA;
- did not say that there were officers that should be fired or subjected to heavier discipline;
- did not say to the officers that he wanted to end detective pay;
- did not say that the union was lying;
- did not say or imply the union was not looking out for its members;
- and did not say the PBA had not fairly represented newer hires.

[Baycora cert., ¶15-23].

The Designee's decision found that Baycora's undisputed statements at the non-voluntary roll call meetings, detailed in the Charging Parties' certifications, had the effect of making a

promise of benefits from him and the City to the police officers and this undermined the authority of the Charging Parties' representation of its members. The Designee concluded that the PBA established a substantial likelihood of prevailing in a final decision in their UPC and will suffer irreparable harm if the temporary restraints are dissolved. The Designee found that Baycora's conduct had a potential chilling effect on employee rights under the Act during ongoing negotiations and undermined labor stability, which constitutes irreparable harm. Lastly, the Designee concluded that the public interest is advanced by requiring the City to adhere to the tenets of the Act and by Baycora ceasing to communicate with the Charging Parties' members about pending collective negotiations in ways prohibited by the Act.

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 this case not to be one of exceptional importance and extraordinary circumstances warranting a full reconsideration of the Designee's decision. However, we do partially grant the City's motion to add language to subsection 1(a) of the Temporary Restraining Order so as not to constrain the Chief from communicating with officers about terms and conditions of employment in a way that does not violate the Act.

Employers may communicate with employees during periods of negotiations, and may inform employees of its negotiations position or the status of negotiations. Somerset Hills Bd. of Ed., P.E.R.C. No. 2017-70, 44 NJPER 14 (¶6 2017); Egg Harbor City, H.E. No. 2000-1, 26 NJPER 33 (¶31010 1999). We disagree with the Designee's finding that Baycora's statements at the roll

call meetings had the direct effect of making a promise of benefits. Additionally, Baycora denies many of the statements attributed to him at the roll call meetings. However, what is undisputed is that Baycora attended roll call meetings where rank and file officers were a captive audience, and in one of these meetings he asked a union official, Eason, along with other superior officers, to leave the room so he could directly address the officers. Baycora also does not dispute that he asked the officers attending the November 11 roll call meeting who among them had attended the PBA and SOA joint membership meeting. Moreover, Baycora does not dispute that at the roll call meetings he stated that officers had more overtime opportunities under his tenure. While Baycora denies saying that certain officers should be fired or subjected to heavier discipline, he does not dispute that he claimed to have been lenient with the severity of certain officers' discipline.

When viewed as a composite, Baycora's undisputed statements amount to more than informing the officers of the City's negotiations position; his statements crossed over into direct dealing with the officers. Baycora's undisputed statements had the effect of undermining the PBA's representation by his portrayal that he was the only responsible party for the increased overtime opportunities and potentially favorable disciplinary determinations. Baycora's depiction could undermine

the PBA's representation efforts and have a potential chilling effect on the rank and file officers during contract negotiations. Moreover, Baycora should not have questioned the officers about who attended the joint PBA/SOA meeting. However, we do note that it is undisputed that Baycora heeded Eason's counsel to immediately stop that line of questioning.

The City argues that the Designee failed to consider the irreparable harm that the temporary restraints would cause the City. It argues that the temporary restraints prevent Baycora from fulfilling his duties under N.J.S.A. 40A:14-118 by restricting his ability to speak and communicate with the officers under his command. We agree with the City's concern that section 1(a) of the Designee's Temporary Restraining Order may unduly interfere with Baycora's right to communicate with officers concerning terms and conditions of employment. We therefore modify subsection 1(a) of the Order to add the words "in a manner that appears to be direct dealing" at the end of that subsection. The modified order will ensure that Baycora is not in a position again, with a captive audience of officers, to make statements that can potentially undermine the PBA's representation efforts, while at the same time not constraining him from communicating with his officers about terms and conditions of employment in a way that does not violate the Act.

ORDER

The City's motion for reconsideration is denied except with regard to the addition of language to subsection 1(a) of the Temporary Restraining Order. The Designee's November 20, 2020 Temporary Restraining Order is modified as follows (underlining represents amended language):

ORDERED that until further notice of the Commission, its designee or the Chairman, the Respondent City and its administrators, including its Chief of Police, is hereby restrained and enjoined from (1) communicating with rank and file and superior officers, other than the Presidents of the Charging parties or during collective negotiations(a) concerning the terms and conditions of employment of rank and file or superior police officers employed by the City's Police Department in a manner that appears to be direct dealing; (b) referring to the Charging Parties or any of their officers in a derogatory manner and (c) concerning the union activities of any rank and file or superior police officer, including, but not limited to, inquiring as to who attended union meetings of the Charging Parties or as to what was expressed at such meetings.

This case is referred back to the Director of Unfair Practices for processing in the normal course.

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, New Jersey