

P.E.R.C. NO. 2000-13

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF WEST NEW YORK,

Respondent,

-and-

Docket No. CO-99-357

WEST NEW YORK PBA LOCAL NO. 361,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Town of West New York for reconsideration of an order of a Commission designee. The designee ordered the Town to rescind an order categorically denying any request for vacation in excess of two weeks during the summer vacation period. West New York PBA Local No. 361 claimed that employees had previously been able to submit vacation requests and have them decided case-by-case. Commission designees act on the Commission's behalf and decisions of designees will not be reconsidered absent extraordinary circumstances. The Commission finds no such circumstances present.

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, Murray, Murray & Corrigan, attorneys
(David F. Corrigan, on the brief)

For the Charging Party, Loccke & Correia, attorneys
(Joseph Licata, on the brief)

DECISION

On June 25, 1999, the Town of West New York moved for reconsideration of I.R. No. 99-24, __ NJPER __ (¶ _____ 1999). In the decision, a Commission designee ordered the Town to rescind an order categorically denying any request for vacation in excess of two weeks during the summer vacation period. West New York PBA Local No. 361 claimed that employees had previously been able to submit vacation requests and have them decided case-by-case.

The designee executed an order to show cause on May 11, 1999 and set a return date for June 3, 1999. On that date, the parties argued orally. The designee, however, struck the Town's papers in response to the order to show cause because they were not filed on time.

On June 10, 1999, the designee issued his interim relief decision. I.R. No. 99-24. He restrained the Town from unilaterally changing terms and conditions of employment by categorically denying all requests seeking vacation in excess of two weeks. He ordered the Town to consider vacation applications on a case-by-case basis with due regard for the method employed in the past to determine whether to grant such requests.

In its motion for reconsideration, the Town argues that the designee refused to consider material evidence that would have changed the result. It also argues that the matter should have been summarily dismissed because it is simply a good faith dispute concerning the interpretation of the parties' agreement.

In response, the PBA asserts that the designee permitted the employer to argue orally the points raised in its brief and that the employer therefore did not suffer any prejudice for its failure to file a timely brief. It further asserts that the employer's procedure for determining vacation requests in excess of two weeks is dictated by past practice, not the contract, and that its charge therefore does not allege a breach of contract. It notes that on June 16, 1999, the police director issued a revised summer vacation memorandum restoring the prior method of considering vacation requests.

We deny reconsideration. Interim relief decisions are issued by Commission designees who act on our behalf. We will not reconsider those decisions absent extraordinary circumstances. City

of Newark, P.E.R.C. No. 99-37, 24 NJPER 517 (¶29240 1998). No such circumstances are present.

In opposing the request for interim relief, the Town argued that to prevent short staffing, vacations were "limited to eight consecutive days (two weeks) during June 15 to September 15, 1999." Brief at 2. The Town further argued that "[t]o limit Police Officers to two weeks of consecutive vacation time surely cannot be considered 'inequitable' to those officers." Brief at 7. A certification of the deputy chief, apparently not considered by the designee because it was untimely, states, in part:

My directive does not mean that vacations will be limited to eight (8) days in the summer. Rather, as I advised the PBA, employees requesting more than eight (8) days will have their request considered later in the year when the Department is in a better position to determine its staffing needs. Thus, an employee that has an August 1 - August 15, 1999 vacation approved, will still be eligible for vacation time for the remainder of August provided the Department is above minimum staffing requirements. However, that determination will not be made until early August.


Although the certification was not considered by the designee, he permitted the Town to make this argument orally and he repeated it in his decision. I.R. at 6. We are therefore satisfied that the designee considered all arguments, including those based on the untimely certification, before issuing his decision and that he did not err in ordering the Town to rescind a categorical denial of all requests seeking vacation in excess of two weeks. In fact, to the extent the Town argues that it did not categorically deny vacations in excess of two weeks, it was not harmed by the designee's order rescinding such a denial.

The Town also argues that relief should have been denied because the charge alleges a mere breach of contract. The designee addressed that argument as well and there are no extraordinary circumstances that warrant revisiting that issue at this time.

ORDER

Reconsideration is denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, McGlynn, Muscato and Ricci voted in favor of this decision. None opposed. Commissioner Madonna abstained from consideration under protest.

DATED: August 26, 1999
Trenton, New Jersey
ISSUED: August 27, 1999