

P.E.R.C. NO. 89-110

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ORANGE TOWNSHIP,

Petitioner,

-and-

Docket No. SN-88-67

FIREMEN'S MUTUAL BENEVOLENT
ASSOCIATION, LOCAL 10,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies a motion to reconsider P.E.R.C No. 89-64, 15 NJPER 26 (¶20011 1988) filed by the City of Orange Township. In that decision, the Commission denied a restraint of binding arbitration of grievances filed by the Firemen's Mutual Benevolent Association, Local 10. The grievances alleged that the City violated the parties' collective negotiations agreement when it refused to schedule the vacations of a fire captain and a fire fighter according to their selections. The City claims that a substitution of counsel prevented its minimum staffing argument from being presented earlier. The motion does not present extraordinary circumstances warranting review. See N.J.A.C. 19:14-8.4.

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Appearances:

For the Petitioner, Genova, Burns & Schott, Esqs.
(Angelo J. Genova and Stephen E. Trimboli, of counsel)

For the Respondent, Rinaldo & Rinaldo, Esqs.
(Anthony D. Rinaldo, Jr., of counsel)

DECISION AND ORDER

On December 28, 1988, after an extension of time, the City of Orange Township ("City") moved for reconsideration of P.E.R.C. No. 89-64, 15 NJPER 26 (¶20011 1988). In that decision, we denied a restraint of binding arbitration of grievances filed by the Firemen's Mutual Benevolent Association, Local 10 ("FMBA"). The grievances allege that the City violated the parties' collective negotiations agreement when it refused to schedule the vacations of a fire captain and a firefighter according to their selections. The chief had issued a directive limiting the number of employees allowed vacations at any one time. Finding nothing in the chief's directive, the City's brief or its grievance responses suggesting

that minimum staffing needs necessitated the cuts in the number of employees permitted to be on vacation, and finding contractual authority to disapprove a particular vacation in light of the employer's needs; we denied the request for a restraint.

The City's current counsel claims that he relied on representations of its former counsel that the chief's certification averred that minimum staffing requirements could not be maintained without the change in policy. The City now concedes that the certification made no such claim. It argues that the substitution of counsel prevented the facts from being presented earlier and that reconsideration is therefore warranted. It attached a new affidavit from the chief implicating minimum staffing. Finally, the City argues the issue will recur and it should not be forced to litigate the same issue again.

On February 16, 1989, after an extension of time until February 13, the FMBA filed a reply affidavit. Its president claims that overtime payments or temporary transfers would have prevented dips below minimum staffing levels. It further claims that current staffing levels do not require greater limits on the number of firefighters allowed vacation.

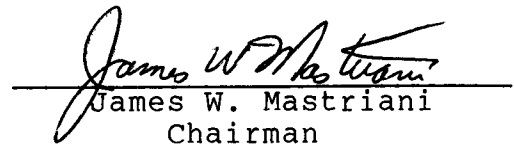
On March 2, 1989, the City filed a reply contending that the FMBA's affidavit is untimely. It also filed another affidavit from the chief claiming that available staffing is less than that claimed by the FMBA.

N.J.A.C. 19:13-3.11 provides that reconsideration may be granted because of extraordinary circumstances. See N.J.A.C. 19:14-8.4. The City argues that this dispute will recur and that it should not have to relitigate this dispute. But that is just what is happening here where the parties are asking us to consider new facts based on new affidavits not presented in the earlier proceeding. Reconsideration is not the forum to bolster past litigation. Nor is relitigation now necessarily preferable to future litigation should a new dispute arise. The motion for reconsideration is denied.

ORDER

The motion for reconsideration is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Ruggiero, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
April 28, 1989
ISSUED: May 1, 1989