

P.E.R.C. NO. 2001-11

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF EGG HARBOR CITY,

Petitioner,

-and-

Docket No. SN-2000-38

P.B.A. LOCAL #77,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the City of Egg Harbor City's request for reconsideration of P.E.R.C. No. 2000-98. In that decision, the Commission denied the City's request for a restraint of binding arbitration of a grievance filed by P.B.A. Local #77. The grievance alleged that the City violated the parties' collective negotiations agreement when it changed from steady to rotating shifts. The City also requested a factual hearing. The Commission holds that the City's motion for reconsideration is untimely. The Commission also denies the City's request for an evidentiary hearing as untimely.

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 Petitioner, Savage and Serio, P.A., attorneys
(Thomas J. Savage, on the motion)

For the Respondent, Schaffer, Plotkin & Waldman,
consultants (Myron Plotkin, on the response)

DECISION

On July 3, 2000, the City of Egg Harbor City filed a notice of motion for reconsideration of P.E.R.C. No. 2000-98, 26 NJPER 286 (131114 2000), issued on May 26, 2000. In that decision, we denied the City's request for a restraint of binding arbitration of a grievance filed by P.B.A. Local #77. The grievance alleged that the City violated the parties' collective negotiations agreement when it changed from steady to rotating shifts. The City also filed a supporting certification of its Director of Public Safety and a request for a factual hearing.

On July 13, 2000, the PBA filed a response arguing that the motion and request are untimely. It reserves the right to address the merits should we grant reconsideration.

N.J.A.C. 19:13-3.11 provides that motions for reconsideration of scope of negotiations decisions may be filed in accordance with the rules governing motions for reconsideration of unfair practice decisions. See N.J.A.C. 19:14-8.4. Those rules provide that a motion must be filed within 15 days of service of the Commission decision. They further provide that the movant shall specify the extraordinary circumstances warranting reconsideration. Timelines may be relaxed where it is manifest that strict adherence will work surprise or injustice or interfere with the proper effectuation of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. N.J.A.C. 19:10-3.1(b). Under all the circumstances, we hold that the motion and request are untimely.

N.J.A.C. 19:13-3.6 requires that a request for an evidentiary hearing be filed no later than five days from the receipt of respondent's initial brief. Failure to file a timely request for an evidentiary hearing shall constitute a waiver of any right to such hearing. Ibid.

The City did not request an evidentiary hearing during the processing of its scope of negotiations petition. Nor did it submit any certifications in support of its position that it had a managerial prerogative to change the shifts of police officers.

P.E.R.C. No. 2000-98 was issued on May 26, 2000. The motion for reconsideration was filed more than a month later. No explanation was given for the delay. In addition, the submission, characterized as a notice of motion for reconsideration, does not

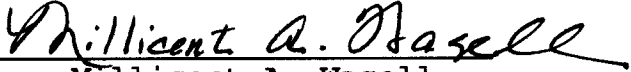
specify why relief should be granted or why the certification was not submitted in the initial proceeding.

We appreciate that the Director of Public Safety may have had legitimate reasons for changing the police work schedules. Our procedures, however, require that arguments be made in a timely manner. Absent a showing of any extraordinary circumstances for relaxing the timelines for filing a motion for reconsideration or for granting reconsideration, we deny reconsideration. We also note that the City may present its reasons for changing the schedules and its contractual arguments in the arbitration proceeding. The arbitrator must consider any pertinent statutory criteria as well as the public interest and welfare. New Jersey Turnpike Auth. v. New Jersey Supervisors Ass'n, 143 N.J. 185, 198 (1996); Kearny PBA Local #21 v. Kearny, 81 N.J. 208, 217 (1979).

ORDER

Reconsideration is denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed. Commissioner Madonna abstained from consideration. Commissioner Buchanan was not present.

DATED: September 28, 2000
Trenton, New Jersey
ISSUED: September 29, 2000