

P.E.R.C. NO. 2024-27

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

POLICEMEN'S BENEVOLENT ASSOCIATION,
LOCAL 334,

Respondent,

-and-

Docket No. CI-2022-015

JUAN MENDOZA,

Charging Party.

SYNOPSIS

The Commission denies the request of PBA Local 334 for reconsideration of its decision granting a request for special permission to appeal from the partial refusal of the Director of Unfair Practices to issue a complaint on a unit member's charge against Local 334, and ordering that a complaint be issued on Mendoza's allegations of retaliation for protected activity (including a previous unfair practice charge Mendoza filed against Local 334). The Commission finds Local 334 has not demonstrated extraordinary circumstances and exceptional importance warranting reconsideration, and stresses that Local 334 will have the opportunity to raise any and all factual disputes and defenses it seeks to assert as this case moves through the unfair practice process.

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, Detzky, Hunter & DeFillippo,
attorneys (Stephen B. Hunter, of counsel)

For the Charging Party, Juan Mendoza, pro se

DECISION

On November 8, 2023, the Respondent, Policemen's Benevolent Association, Local 334 (Local 334), moved for reconsideration of P.E.R.C. No. 2024-16, 50 NJPER 243 (¶54 2023). In that decision we granted the request of the Charging Party, Juan Mendoza (Mendoza), for special permission to appeal from a decision of the Director of Unfair Practices^{1/} partially refusing to issue a Complaint on Mendoza's unfair practice charge against Local 334. Specifically, the Director refused to issue a Complaint on Mendoza's claim that Local 334's suspension of him from the union

^{1/} D.U.P. No. 2023-28, 50 NJPER 27 (¶9 2023), issued June 22, 2023.

violated N.J.S.A. 34:13A-5.4b(1) of the New Jersey Employer-Employee Relations Act (Act). On Mendoza's appeal from that decision, we found his amended unfair practice charge provided sufficient allegations of retaliation for protected activity (including a previous unfair practice charge Mendoza filed against Local 334) which, if true, may constitute an unfair practice and warrant the issuance of a Complaint. 50 NJPER at 246. We otherwise concurred with the Director's issuance of a 5.4b(1) complaint on Mendoza's other allegation, that Local 334 may have breached its duty of fair representation to Mendoza by refusing to support his grievance concerning his service-connected injury and sick leave. Id. at 245. We specifically noted Local 334 did not appeal the Director's determination on that claim. Id. Local 334 filed a letter memorandum, exhibits, and the certification of its counsel, Stephen B. Hunter, in support of its motion for reconsideration. Mendoza filed a letter brief, exhibits, and his certification in opposition.

Pertinent to Local 334's motion for reconsideration, we note the following facts concerning the procedural history. The Director issued his decision partially refusing to issue a complaint on June 22, 2023. On June 29, Mendoza timely filed his request for special permission to appeal the Director's decision. PERC's case management system indicates that Local 334 filed no opposition to Mendoza's request by July 7, its deadline to file

opposition, if any. The Commission issued its decision granting Mendoza's appeal on October 26, 2023. Local 334's motion for reconsideration of the Commission's decision is dated November 8, 2023. However, Local 334 did not email its motion papers to PERC's general email address, the address specified for electronic filings in N.J.A.C. 19:10-2.1(h). As a result, PERC's case management staff were unaware of Local 334's motion for reconsideration until the office of Local 334's counsel phoned PERC to request acknowledgment of receipt. The Secretary to PERC's General Counsel then informed the caller that Commission filings must be sent to PERC's general email address.

Reconsideration "will only be granted based on a demonstration of extraordinary circumstances and exceptional importance. The movant shall specify and bear the burden of establishing the grounds warranting reconsideration." N.J.A.C. 19:13-3.12(a). 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).

Local 334 argues that, contrary to the Commission's determination in P.E.R.C. No. 2024-16, it did appeal from the Director's decision to issue a 5.4b(1) complaint on Mendoza's allegation that Local 334 breached its duty of fair representation. As evidence that it filed such an appeal, Local 334 points to assertions that appear in a letter memorandum dated June 30, 2023, opposing Mendoza's request for special permission to appeal the Director's decision. A copy of this letter memorandum is included in the exhibits submitted by Local 334 in support of its motion for reconsideration. The exhibit includes an email cover, indicating the letter memorandum was attached to an email dated June 30, 2023 that was not sent to PERC's general email address. As a result, the June 30 letter memorandum was not processed as part of the record in Mendoza's request for special permission to appeal.

In the June 30 letter memorandum, Local 334 argues it did not violate its duty of fair representation in connection with Mendoza's grievance. Local 334 contends the Commission's "fail[ure] to acknowledge" such assertions constitutes extraordinary circumstances warranting reconsideration. We do not agree. Even if Local 334 had properly filed its June 30 memorandum by sending it to PERC's general email address, and even if we had considered it in P.E.R.C. No. 2024-16, we find it would not have altered our decision therein. When viewed as

opposition to Mendoza's request for special permission to appeal, we find the June 30 letter memorandum provided no cause to alter the Director's determinations that Local 334 "has not claimed to have exercised reasonable care in investigating or processing Mendoza's grievance," and "has not provided any reason whatsoever" for its decision not to do so, despite Mendoza's request for assistance. D.U.P. at 30. If the June 30 letter memorandum is viewed as Local 334's own request for special permission to appeal, we find it was untimely.^{2/} In light of these facts, Local 334 has not demonstrated extraordinary circumstances and exceptional importance warranting reconsideration of the duty of fair representation issue as addressed by the Commission in P.E.R.C. No. 2024-16.

Finally, we stress that P.E.R.C 2024-16 was limited to a decision that a complaint should issue on the applicable unfair practice charges in this case. As this case moves through the unfair practice processes, Local 334 will have the opportunity to raise any and all factual disputes and defenses it seeks to assert. However, its positions do not satisfy the standards for a motion for reconsideration in this matter.

^{2/} N.J.A.C. 19:14-4.6(b) requires that requests for special permission to appeal must be filed within five days from the service of the written ruling. Here, all requests for special permission to appeal from the Director's June 22, 2023 decision were due by June 29, 2023.

ORDER

PBA Local 334's motion for reconsideration is denied.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Ford, Higgins and Papero voted in favor of this decision. None opposed. Commissioner Voos was not present.

ISSUED: December 14, 2023

Trenton, New Jersey