

P.E.R.C. NO. 2002-46

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH HUDSON REGIONAL
FIRE AND RESCUE,

Respondent,

-and-

Docket No. CO-H-2000-254

NORTH HUDSON FIRE OFFICERS
ASSOCIATION,

Charging Party,

-and-

TOWNSHIP OF WEEHAWKEN,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Township of Weehawken for special permission to appeal a Hearing Examiner's ruling on the Township's motion to intervene in an unfair practice proceeding between the North Hudson Regional Fire and Rescue and the North Hudson Fire Officers Association. The charge alleges that the Regional violated the New Jersey Employer-Employee Relations Act when the Township of Weehawken passed an ordinance promoting certain persons to the rank of fire lieutenant and designating a pay rate for the position inconsistent with the prior contract. The Hearing Examiner denied full intervention status to the Township, but permitted the Township to brief the legal issue it raises regarding its ordinance. The Commission denies special permission to appeal and defers to the Hearing Examiner's judgment to permit only partial intervention.

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, Scarinci & Hollenbeck, LLC, attorneys
(Mark S. Tabenkin, of counsel)

For the Charging Party, Loccke & Correia, P.A., attorneys
(Michael A. Bukosky, of counsel)

For the Intervenor, Murray, Murray & Corrigan, attorneys
(David A. Corrigan, of counsel)

DECISION

On February 28, 2000, the North Hudson Fire Officers Association filed an unfair practice charge against the North Hudson Regional Fire and Rescue. The charge alleges that the Regional violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1), (2), (3), (5) and

(7), ^{1/} when the Township of Weehawken, one of the five towns making up the Regional, passed an ordinance promoting certain persons to the rank of fire lieutenant and designating a pay rate for the position inconsistent with the prior Weehawken contract. That action allegedly violated N.J.S.A. 40:48B-4.2 which requires that "the terms and conditions of existing contracts shall apply to the rights of the members of the respective bargaining units until a new contract is negotiated, reduced to writing and signed by the parties...." The Association seeks adjustment of the promotees' salaries to the pay rate for supervisory officer in the Weehawken agreement before consolidation.

On March 28, 2001, a Complaint and Notice of Hearing issued. On April 25, the Regional filed an Answer including as one of its affirmative defenses that it was not a proper party to this action.

^{1/} 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. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (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. (7) Violating any of the rules and regulations established by the commission."

On August 15, 2001, Weehawken sought to intervene because the validity of one of its ordinances was at issue. The Association opposed the motion and the Regional supported it.

On December 3, 2001, Hearing Examiner Arnold H. Zudick issued a letter responding to the motion. He wrote, in part:

With respect to Weehawken's motion to intervene, I have several questions regarding the need for Weehawken's intervention. I consider it more efficient to pose those questions and receive the answers on the record on the first day of hearing. I will, thereafter, decide to what extent--if any--Weehawken will be allowed to intervene. Therefore, I invite Mr. Corrigan to appear on the first day of hearing to address the motion.

On December 12, 2001, Weehawken objected and asked for a decision prior to hearing to allow for preparation or an appeal.

On January 8, 2002, the Hearing Examiner issued a clarification. He stated, in part:

Your motion did not persuade me that the City of Weehawken be allowed full intervention in this case. My intention was to give you a final opportunity through argument. To be precise, the motion is granted in limited part, but denied in substantial part. I am not permitting the City to be involved in the hearing including the gathering of facts, the presentation, examination or cross-examination of witnesses, the presentation of documents, or oral argument. However, I will permit the City to brief the legal issue it raises regarding its ordinance.

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The issue in this case is whether the public employer, the Regional, not the City, violated the Act based upon the level of compensation it provided to certain employees. I believe the Regional is quite capable of presenting the facts it needs to demonstrate why it took the action

complained of. The City's involvement in the fact gathering portion of this hearing would make the hearing unnecessarily complicated and only lead to further delay.

On January 28, 2002, after an extension of time, Weehawken requested special permission to appeal that ruling. The Township argues that it has an interest in the matter; its interest will not be adequately represented by the parties; intervention will not unduly delay or complicate the litigation or prejudice the other parties' rights; its motion was prompt; intervention will eliminate the probability of subsequent litigation; the entire controversy doctrine calls for its participation; and factual issues warrant its intervention.


Special permission to appeal will be granted only in extraordinary circumstances. The Hearing Examiner has allowed the Township to present all its legal arguments at the conclusion of the case. We therefore focus on whether there are extraordinary circumstances warranting review of his decision that there are no factual issues that require the Township's earlier participation.

The Township asserts that the factual issue is that the unilateral act was not taken by the employer, the Regional, but by the Township. At this juncture, we do not see how this fact, essentially undisputed, creates a need for the Township's participation in the hearing. We will defer to the Hearing Examiner's judgment to permit only partial intervention.

ORDER

The request for special permission to appeal is denied.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Katz, McGlynn, Ricci and Sandman voted in favor of this decision. Commissioner Muscato was not present.

DATED: February 28, 2002
Trenton, New Jersey
ISSUED: March 1, 2002