

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of	:	
	:	
MARK FOSTER, STEVEN LEWIS,	:	
BRAINARD SAMUELS, HUDSON	:	OAL DKT. NO. CSV 6386-07
WILLIAMS AND CARL WINROW,	:	
	:	AGENCY DKT. NO. 2007-570-1
Appellants,	:	
	:	
v.	:	
	:	
CITY OF TRENTON HOUSING	:	
AUTHORITY,	:	
	:	
Respondent.	:	
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CITY OF TRENTON HOUSING	:	
AUTHORITY,	:	
	:	OAL DKT. NO. PRC 8657-08
Respondent,	:	
	:	PERC DKT. NO. CO-2007-039
-and-	:	
	:	
COMMUNICATIONS WORKERS OF	:	
AMERICA, AFL-CIO, LOCAL 1040,	:	
	:	
Charging Party.	:	

SYNOPSIS

In the absence of exceptions, the Chairman adopts the decision of the Administrative Law Judge dismissing the unfair practice complaint.

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 Appellants-Charging Parties, Weissman & Mintz,
attorneys (Rosemarie Cipparulo, of counsel)

For the Respondent, Regina Waynes Joseph, attorney

DECISION

On August 3, 2006, the Communications Workers of America, AFL-CIO, Local 1040 filed an unfair practice charge against the City of Trenton Housing Authority. The charge alleges that the Authority violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4(a)(1), (2), (4), (5) and (7),^{1/} when it laid off negotiations unit members without notice to the CWA after the affected employees were successful in a grievance arbitration that awarded back pay and interest to the employees. On September 26, 2007, a Complaint and Notice of Hearing was issued.

On August 4, 2006, the CWA filed an appeal to the Merit System Board^{2/} on behalf of Mark Foster, Steven Lewis, Brainard Samuels, Hudson Williams and Carl Winrow. The appellants allege

^{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. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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. . . and (7) Violating any of the rules and regulations established by the commission."

^{2/} On June 30, 2008, P.L. 2008, c. 29 took effect, changing the Merit System Board to the Civil Service Commission.

that the layoff was in bad faith and in violation of Civil Service regulations because procedures were not followed and the majority representative was not notified. The appeal was transmitted to the Office of Administrative Law as a contested case on August 9, 2007.

On January 4, 2008, the CWA filed a motion for consolidation and predominant interest determination. It argued that both actions arise from the City's layoff plan and the motivation for that plan. On May 6, the City advised the Administrative Law Judge that it did not object to the motion.

On May 9, 2008, Administrative Law Judge Donald J. Stein issued an Order of Consolidation and Predominant Interest. He found that neither agency has the clear predominant interest, but this Commission has the severable unfair practice issue. He therefore directed that this Commission has the predominant interest.

The Complaint and appeal were consolidated and heard by an Administrative Law Judge pursuant to a Joint Order of this Commission and the Civil Service Commission. See P.E.R.C. No. 2009-6, 34 NJPER 227 (¶78 2008). That Joint Order required the ALJ to offer recommended findings of fact and conclusions of law to both this Commission and the Civil Service Commission. Upon transmittal of the initial decision to both agencies, the underlying record was transferred to this Commission to determine

whether protected activity was a substantial or motivating factor in the layoff. Upon issuance of this decision, the record will be forwarded to the Civil Service Commission for a determination whether the layoff was for legitimate business reasons and was otherwise warranted under Civil Service law. If appropriate, the matter would then have been returned to this Commission for consideration of whether specialized relief is warranted under the Act.

On September 18, 2008, the ALJ issued an initial decision recommending dismissal of the unfair practice Complaint. In accordance with the Joint Order, the consolidated matter first comes to this Commission for review.

The parties were informed that they had 13 days to file exceptions. Neither party has done so. Pursuant to authority granted to me by the full Commission in the absence of exceptions, I have reviewed the record and adopt and incorporate the ALJ's findings of fact and his legal conclusion that the Authority did not violate the Act. Accordingly, I dismiss the Complaint.

Pursuant to the Joint Order, I transfer the remaining aspects of the case to the Civil Service Commission.

ORDER

The Complaint is dismissed. The remaining aspects of the case are transferred to the Civil Service Commission.

A handwritten signature in black ink, appearing to read "Lawrence Henderson", written over a horizontal line.

Lawrence Henderson
Chairman

ISSUED: October 27, 2008

Trenton, New Jersey