

P.E.R.C. NO. 2011-33

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF TEANECK,

Respondent,

-and-

Docket No. CO-2009-467

TOWNSHIP OF TEANECK,
POLICEMEN'S BENEVOLENT
ASSOCIATION, LOCAL 215

Charging Party.

SYNOPSIS

The Public Employment Relations Commission adopts the initial decision of an Administrative Law Judge dismissing the Complaint in an unfair practice case filed by the Township of Teaneck Policemen's Benevolent Association, Local 215 against the Township of Teaneck. The Commission finds that even if made, the Mayor's alleged statement to the press that unions who made concessions during negotiations would have their names taken off layoff lists, standing alone, is insufficient to find a violation of the Act.

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, Genova Burns & Giantomasi,
attorneys (Carolyn Buccerone, of counsel)

For the Charging Party, Loccke Correia Schlager Limsky
& Bukosky, attorneys (Lauren P. Sandy, of counsel)

DECISION

On January 15, 2009, the Township of Teaneck Policemen's Benevolent Association, Local 215 filed an unfair practice charge against the Township of Teaneck. The charge alleges that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4a(1) through (7),^{1/} when it laid off eight police officers.

^{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 (continued...)"

Specifically, the charge asserts that the Township failed to effectuate the layoffs in accordance with the officers' seniority rights under Civil Service law; there were procedural defects in the layoff notices; and since the parties are currently in interest arbitration, the Township is negotiating in bad faith based on a statement from the Mayor in a newspaper article that if unions come to an agreement with the Township, their names would come off the layoff list. On January 20, 2010, the Director of Unfair Practices issued a Complaint and Notice of Hearing on the 5.4a(1) and (5) allegations only.

On January 22, 2010, the Township filed a motion with an Administrative Law Judge to consolidate the unfair practice charge with a Civil Service matter in which the PBA asserted that the layoffs were being implemented in bad faith rather than for reasons of economy or efficiency. N.J.A.C. 1:1-17.1. In its

1/ (...continued)
employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (7) Violating any of the rules and regulations established by the commission."

motion, the Township also asserted that the Civil Service Commission had the predominant interest. N.J.A.C. 1:1-17.5.

On January 29, 2010, the ALJ granted the motion to consolidate, but held the motion for predominant interest in abeyance pending receipt of the evidence.^{2/} At the conclusion of the PBA's case, the Township moved to dismiss for failure to state a cause of action. The motion was opposed by the PBA.

On August 19, 2010, the ALJ issued his Initial Decision granting the Township's motion to dismiss. He found that the Civil Service Commission had the predominant interest. He also found that "no favorable inferences . . . may be drawn from either the documentary evidence submitted or oral testimony provided by the PBA" that could defeat the Township's motion to dismiss. Initial Decision at 10. With regard to the unfair practice charge, he ordered as follows:

^{2/} Orders granting or denying consolidation of cases commenced before multiple agencies must be forwarded by the ALJ to the respective agency heads for their review. N.J.A.C. 1:1-17.7 (a). The agency heads have 45 days to review the ALJ's order before issuing a final order regarding consolidation. N.J.A.C. 1:1-17.7(b) and (c). Here, the ALJ consolidated the unfair practice charge with the Civil Service matter and made a predominant interest determination without having first issued an order for review by the two agencies. Despite this procedural defect, in the interests of administrative economy, we will proceed as if the two agencies had issued an order consolidating the two cases and we had transmitted the unfair practice case to the OAL for hearing with the Civil Service case. We note that neither party has raised any objections with regard to this procedural error.

The evidence produced by the PBA in support of its obligation to come forward with some evidence from which a reasonable inference could be drawn to defeat the Township's motion to dismiss applies equally to the PERC issue. There is no basis in this record to compel the Township to go forward and expend limited resources to defend itself on an alleged Unfair Practice Charge based on this record. Therefore, the Unfair Labor Practice Charge is DISMISSED."

[Initial Decision at 12]

The PBA filed exceptions to the ALJ's initial decision, and the Township filed a response opposing the exceptions.^{3/}

The only issue in the unfair practice charge is whether the Mayor's alleged statement that unions who made concessions during negotiations would have their names taken off the layoff list constitutes a refusal to negotiate in good faith concerning terms and conditions of employment or an interference with the PBA's rights under the Act. A determination that a party has refused to negotiate in good faith will depend upon an analysis of the overall conduct and attitude of the party charged. City of Jersey City, P.E.R.C. No. 80-55, 5 NJPER 495 (¶10252 1979), recon. granted P.E.R.C. No. 80-113, 6 NJPER 177 (¶11085 1980).

^{3/} During the course of the litigation and in its exceptions, the PBA modified its claims regarding seniority and notice. The PBA's revised argument was that its assertions regarding seniority and notice were only with regard to when the layoff plan was initially filed and that the Township's actions at the time of the initial filing evidenced that the layoff was being done in bad faith rather than for reasons of economy or efficiency.

Having considered the ALJ's Initial Decision, and after conducting an independent review of the record, we agree with the ALJ that even if true, the Mayor's alleged statement, standing alone, is insufficient to find a violation of the Act.

Therefore, we accept the ALJ's recommendation to dismiss the Complaint.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

Commissioners Eaton, Fuller, Krengel, Voos and Watkins voted in favor of this decision. None opposed. Commissioner Colligan recused himself.

ISSUED: October 28, 2010

Trenton, New Jersey