

P.E.R.C. NO. 2024-32

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF NUTLEY,

Respondent,

-and-

Docket No. CO-2022-207

INTERNATIONAL ASSOCIATION OF EMTS
AND PARAMEDICS (IAEP), LOCAL R2-806,

Charging Party.

SYNOPSIS

The Commission denies the Township of Nutley's motion for summary judgment on IAEP, Local R2-806's unfair practice charge alleging the Township violated the Act by refusing to sign and execute a collective negotiations agreement (CNA) after Local R2-806 adopted and signed a tentative agreement reached by the parties' negotiating teams. The Commission finds summary dismissal would be premature as the motion record does not contain facts material to a determination of whether the Township violated the Act, including facts establishing: (1) whether the Township's Board of Commissioners actually met and exercised its right to ratify (or not ratify) the draft CNA; or (2) any explanation why it found the draft unacceptable and did not thereafter notify Local R2-806 and otherwise resume negotiations toward an agreement that the Township could accept.

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, Antonelli Kantor Rivera, attorneys
(Lawrence M. Teijido, of counsel)

For the Charging Party, IAEP, Local R2-806 (Frank
Wagner, IAEP National Representative)

DECISION

This case comes to us by way of a motion for summary judgment. On April 8, 2022, the International Association of EMTs and Paramedics, Local R2-806 (Local R2-806), filed an unfair practice charge against the Township of Nutley (Township). The charge alleged that the Township engaged in unfair practices as defined by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act), in connection with the Township's refusal to sign and execute a collective negotiations agreement (CNA^{1/}) after Local R2-806 adopted and signed a

1/ Also referred to by the parties as a collective bargaining
(continued...)

tentative agreement reached by the parties' negotiating teams.

Among other things, the charge alleges:

On January 28, 2022, a signed copy of the CBA was sent [by the union] to the employer for signatures and execution. After January 28, 2022 the employer has . . . refused to sign and fully execute the negotiated agreement, and has refused to bargain further. . . . On March 18, 2022, [in] a meeting . . . between the employer [management representatives] . . . and the local [regarding alleged payroll issues affecting unit members] . . . the employer did not know why the [payroll issues were occurring or]. . . why the contract was not signed and executed . . . [and gave] conflicting statements and information. The employer questioned the local union member(s) why it was necessary to even have a union, and the employer further stated that if there was no union that [(sic)] the employees would have already been paid and that even if the contract were to be signed it would still need to be approved by the town. The employer agreed to get back to the union on Friday March 25th 2022, no response was received. On March 31, 2022 the employer was contacted again with no response. Additionally the employer has indicated to the union via the EMS Coordinator . . . that the employer will not agree to the stipulations of the tentative agreement. Additionally [the EMS Coordinator] has avoided, declined and refused to meet with the union to resolve its issues and has interfered in the scheduling of these meetings between the union and the employer.

Lastly, on March 31, 2022, calls and emails were placed to the [Township's labor counsel] . . . to confirm that he was in fact still representing the employer. That was confirmed. However there has been no further

1/ (...continued)
agreement or "CBA".

communications from the employer, management and their legal counsel

As a remedy, the Charging Party seeks among other things an order requiring the draft CNA to be "signed and executed with retro pay and compensation from the date originally agreed upon."

On January 4, 2023, it appearing that the allegations in the charge, if true, may constitute unfair practices, the Director of Unfair Practices issued a Complaint on the 5.4a(1), (5) and (6)^{2/} allegations of the charge.

On November 1, 2023, the Township filed a motion for summary judgment, together with a supporting brief, exhibits, and the certifications of Lawrence M. Teijido, the Township's counsel, and Sandra Carella, Assistant to the Township's Commissioner of Public Safety. On November 13, 2023, Local R2-806 filed a brief in opposition and exhibits. Local R2-806 did not file opposing affidavits or certifications. We glean the following facts from the record.^{3/}

2/ 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"; "(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 "(6) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

3/ We derive the facts (unless otherwise noted) from the record presented on the summary judgment motion, including the
(continued...)

On March 31, 2021, the Township initiated negotiations for the CNA at issue through a letter from the Township's labor counsel, Ramon Rivera, to the President of IAEP, Local 806, stating in pertinent part as follows:

Our office represents the Township of Nutley in labor negotiations. We have been advised that you are the Union Representative for the International Association of EMTs and Paramedics, Local 806 (the "Union").

As you may be aware, the Nutley Volunteer Emergency Rescue Squad ("NVERS") is being dissolved and as such, the Collective Bargaining Agreement between NVERS and the Union is no longer applicable.^[4/] However the Township is seeking to draft a new agreement between itself and the Union.

To that end, we would like to set up a meeting to discuss. Please let me know what your availability is over the next two weeks.

The above letter was sent in advance of the dissolution of the Township's EMS Squad which, prior to June 2021, was a

3/ (...continued)
Township's certifications and documentary exhibits, and IAEP's documentary exhibits.

4/ The record contains no copy of the "Collective Bargaining Agreement," referenced in this letter, between the volunteer EMS Squad and IAEP, Local 806 (as distinct from the Charging Party, Local R2-806). There is also no evidence in the record of any such prior agreement either between the Township and the volunteer EMS Squad, or between the Township and Local 806. As such, we assume the draft CNA that is the focus of Local R2-806's charge is a product of the parties' very first attempt to negotiate a CNA that would govern the terms and conditions of employment of Local R2-806 unit members after the dissolution of the volunteer squad.

volunteer force existing as a "501(c)" organization.^{5/} The Township's Statement of Material Facts states that in the Summer of 2020, it was discovered that the president of the organization had embezzled funds.^{6/}

On April 2, 2021, Frank Wagner, a National Representative of the International Association of EMTs and Paramedics, responded by email to Rivera's March 31 letter, offering several

^{5/} As the record does not define it, we take administrative notice that a "501(c) organization" is a nonprofit organization according to Internal Revenue Code (26 U.S.C. § 501(c)).

^{6/} By way of further background, we take administrative notice of a news article with a September 12, 2021 dateline published by NorthJersey.com and headlined: "Nutley ambulance squad dissolved, absorbed into town, months after arrest of leader." This article further states:

After a year of controversy and questions surrounding finances, the Nutley Volunteer & Emergency Rescue Squad has been dissolved.

The Nutley Board of Commissioners passed a resolution in August that dissolved the rescue squad as an independent organization and transferred its assets to the township.

The squad is now under the umbrella of the Nutley Fire Department, maintaining volunteers, per diems and at least one full-time hire. They continue to work out of the squad building on Chestnut Street, which is owned by the township.

[<https://www.northjersey.com/story/news/essex/nutley/2021/09/12/nutley-nj-ambulance-squad-disbanded-following-jonathan-arredondo-arrest/8255293002/> (last viewed January 4, 2024).]

dates for meetings. There followed five negotiations sessions during a period commencing April 19 and concluding September 21. The Township certifies (and Local R2-806 does not dispute) that Local R2-806 was specifically advised during negotiations that any agreement was subject to final approval by the Township's Board of Commissioners. At the fifth meeting the parties reached a tentative agreement with a term of June 1, 2021 through December 31, 2022, and also agreed that the Township's labor counsel would create a draft of it.

The motion record includes email correspondence between the parties regarding various subsequent drafts of the CNA. On September 30, 2021, an associate of the Township's labor counsel emailed Wagner a draft of the CNA, with the following comments: "I know it's a quick turnaround, but if the Union is able to approve by Monday, we can get this on the October 5th agenda. If not, we will have to wait for the next agenda on October 19th." On November 8, 2021, Wagner emailed Rivera: "The T/A [tentative agreement] was accepted by the membership. You can now prepare a final copy for review and signatures."

On January 20, 2022, Rivera's associate emailed Wagner "the final version of the CBA for execution." On January 28, Wagner emailed back: "CBA has been signed by the local union president. See attached. Now the employer needs to sign." On the same day,

Rivera's associate replied, "Received, thanks! I'll send back the fully executed copy ASAP."

The motion record contains no information as to whether the draft CNA was ever presented to the Township's Board of Commissioners for a vote on final approval or adoption.

The Township certifies that in June 2022, it sent a letter to EMS Squad personnel terminating their positions, effective September 6, 2022, and advising of the Township's decision "to only utilize full-time employees . . . due to the limited availability of per diem EMS personnel each month and the inability to consistently staff the ambulances with EMS personnel." The Township further certifies that effective September 6, 2022, "there were no members of Local R2-806," and the Township has "exclusively utilized Fire Department personnel for ambulance riding and EMS services."

The Standard of Review

Summary judgment will be granted if there are no material facts in dispute and the moving party is entitled to relief as a matter of law. Our regulation on summary judgment motions, N.J.A.C. 19:14-4.8(e), provides:

If it appears from the pleadings, together with the briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and that the movant or cross-movant is entitled to its requested relief as a matter of law, the motion or cross-motion for summary judgment may be

granted and the requested relief may be ordered.

Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995) specifies the standard for determining whether a “genuine issue” of material fact precludes summary judgment. The factfinder must “consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.” If that issue can be resolved in only one way, it is not a “genuine issue” of material fact. In other words, summary judgment should be granted “if the evidence is so one-sided that one party must prevail as a matter of law.” Id. “Although summary judgment serves the valid purpose in our judicial system of protecting against groundless claims and frivolous defenses, it is not a substitute for a full plenary trial” and “should be denied unless the right thereto appears so clearly as to leave no room for controversy.” Saldana v. DiMedio, 275 N.J. Super. 488, 495 (App. Div. 1995); see also, UMDNJ, P.E.R.C. No. 2006-51, 32 NJPER 12 (¶6 2006).

Arguments of the Parties

The Township argues that the complaint must be summarily dismissed because the Township is not subject to contractual obligations with Local R2-806, as the draft CNA was never executed by the Township’s Board of Commissioners, Mayor, or any

of its representatives. The Township also argues that no individual on the Township's negotiating team was vested with apparent authority to bind the Township to the tentative agreement. The Township further argues that the complaint must be dismissed as moot, because there are currently no Local R2-806 members employed by the Township. Lastly, the Township argues that in the event the complaint is not dismissed in its entirety, an order should be issued stating that Local R2-806 is not entitled to the remedy requested.

In opposition to summary judgment, Local R2-806 reiterates the allegations in its charge. It argues that the Township authorized its representatives to negotiate with the union, and that if the Township did not accept the tentative agreement, it was required to continue to bargain in good faith and notify the union that the agreement was rejected. That did not occur. Instead, Local R2-806 argues, the Township at first indicated the draft CNA would be put on the agenda for approval, but then the Township did nothing except interfere, restrain, coerce and refuse to bargain in good faith or return to the table until Local R2-806 members were laid off effective September 26, 2022.

Analysis

Viewing the record evidence in a light most favorable to the non-moving party, we deny the Township's motion for summary

judgment. We do not find the evidence to be so one-sided that the Township must prevail as a matter of law.

N.J.S.A. 34:13A-5.3 provides, in part:

In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes, and other terms and conditions of employment. Nothing herein shall be construed as permitting negotiation of the standards or criteria for employee performance.

When an agreement is reached on the terms and conditions of employment, it shall be embodied in writing and signed by the authorized representatives of the public employer and the majority representative.

[Emphases supplied.]

N.J.S.A. 34:13A-5.4a(5) makes it an unfair practice for an employer, its representatives, or agents not to negotiate in good faith with a majority representative. N.J.S.A. 34:13A-5.4a(6) makes it an unfair practice for an employer, its representatives, or agents not to sign a negotiated agreement. In Borough of Palmyra, P.E.R.C. No. 2008-16, 33 NJPER 232 (¶89 2007), we declined to reconsider our prior dismissal^{2/} of a union's unfair practice charge alleging the employer acted in bad faith in not

^{2/} See, P.E.R.C. No. 2008-5, 33 NJPER 207 (¶75 2007) (after union prepared draft contract, borough suggested changes, which were resolved; borough then raised other proposed changes, which union accepted; borough council then met and refused to approve contract because it believed the cost was too high).

ratifying a draft contract that was negotiated by the parties' respective negotiating teams. There we stated, in pertinent part:

The Association's theory is that since it accepted the salary and overtime proposals presented by the Borough's own negotiators, the Borough Council was bound to ratify a contract containing those proposals. While we are troubled by a governing body's not accepting terms initially proposed by its own representatives, there is no per se rule that a governing body loses a right to ratify when its initial proposals are accepted and there is no evidence that a majority of the Council knew of or had approved the proposals its negotiations team would make. The Council members who were on the negotiations team acted in good faith and properly supported ratification, as they were legally bound to do, but the other Council members were free to judge the acceptability of the terms being submitted to them in light of the economic circumstances then existing. Those circumstances included a fiscal crisis that led to decisions to close the welfare office, lay off a tax clerk and part-time maintenance employee, and raise taxes 14 percent. Under the totality of the circumstances, we do not find that the Borough acted in bad faith in not ratifying the draft contract.

[P.E.R.C. No. 2008-16, 33 NJPER 232 (¶89 2007) (emphases added).]

Here, the record does not contain undisputed facts that we believe would be material to a determination of whether the Township violated 5.4a(5) or, derivatively, 5.4a(1), by its refusal to ratify the draft CNA at issue. Specifically, unlike in Palmyra, the record here is devoid of evidence that the Township's Board of Commissioners actually met and exercised its

right to ratify (or not ratify) the draft CNA after considering and voting on it. Even assuming the Board took such action to decline to ratify, the record contains no explanation as to why it found the draft CNA unacceptable; or why the Township did not thereafter notify Local R2-806 of this development and otherwise seek to resume negotiations toward an agreement that the Township could accept. We find summary dismissal, before such a factual record can be further developed before a hearing examiner, would be premature.

We further find that the Township's mootness argument does not support a grant of summary judgment. A case will be not be found moot if there remain open issues which have practical significance; if there is a continuing chilling effect from the earlier conduct which has not been erased; or if, after a respondent's corrective action, a cease and desist order is necessary to prevent other adverse action against the same or other employees; and, if the offending conduct is likely to recur. See, Galloway Tp. Bd. of Ed. v. Galloway Tp. Ass'n of Ed. Secys., 78 N.J. 1 (1978) and Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25 (1978).

The Township's Statement of Material Facts states that "[i]n June 2021 the Township formally took over the EMS Squad. Following the takeover, the Township and Local R2-806 proceeded to engage in negotiations for a collective bargaining agreement."

It is clear that the Township, by initiating and engaging in negotiations in this matter, does not dispute that the terms and conditions of employment of Local R2-806 unit members became negotiable after June of 2021, when the Township dissolved the volunteer ambulance squad and took control of its operations. The Township's termination of those employees' positions effective September 6, 2022 does not negate the negotiability of their terms and conditions of employment while they were in the Township's employ between June 2021 and September 2022.

Based upon the foregoing, we deny the Township's motion for summary judgment and remand for further processing by the Hearing Examiner.

ORDER

The motion for summary judgment filed by the Township of Nutley is denied. This matter is remanded to the Hearing Examiner for a hearing.

BY ORDER OF THE COMMISSION

Chair Hennessy-Shotter, Commissioners Bolandi, Eaton, Ford, Higgins, Kushnir and Papero voted in favor of this decision. None opposed.

ISSUED: January 25, 2024

Trenton, New Jersey