

P.E.R.C. NO. 2024-44

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

City of Trenton,

RESPONDENT,

-and-

Docket No. CO-2023-050

PBA Local 11 (Superiors),

PETITIONER.

SYNOPSIS

The Public Employment Relations Commission grants the PBA's motion to file its appeal out of time and grants its appeal. The PBA appealed the Deputy Director's denial of the PBA's motion to reopen Docket No. CO-2023-050, which was administratively dismissed after the PBA failed to respond to two of the Hearing Examiner's status requests. The Deputy Director denied the PBA's motion to reopen finding the PBA did not show extraordinary circumstances or that a dismissal would create an injustice pursuant to N.J.A.C. 19:14-1.5(e). The Commission finds that justice and judicial efficiency will be best served by reinstating CO-2023-050, given the potential confusion and miscommunication created by the treatment of various UPCs, including CO-2023-050, in global settlement discussions which contributed to the PBA's non-responsiveness to the Hearing Examiner's status request.

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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Petitioner.

Appearances:

For the Respondent, City of Trenton (Palmer J. Richardson, of counsel)

For the Petitioner, Alterman & Associates, LLC, attorneys (Arthur J. Murray, of counsel)

DECISION

PBA Local 11 (PBA) files this notice of motion to hear its appeal out of time following the Deputy Director of Unfair Practices' denial of its motion to reopen an administrative dismissal of its unfair practice charge, Docket No. CO-2023-050. The PBA's motion to reopen followed a Hearing Examiner's October 18, 2023 administrative dismissal, without prejudice, of the PBA's unfair practice charge due to the PBA not responding to two status requests from the Hearing Examiner.^{1/} The Deputy Director denied the PBA's motion to reopen finding the PBA did not show

^{1/} We note that the Hearing Examiner's second request cautioned the PBA that if it did not respond, its unfair practice charge would be dismissed.

extraordinary circumstances or that a dismissal would create an injustice pursuant to N.J.A.C. 19:14-1.5(e). He further reasoned as follows:

While the PBA argues that it was "under the impression [that] the Commission would be scheduling a telephone conference with the parties to discuss [the] suggested manner of proceeding" and that "there was no further update to provide the Commission" after counsel sent an e-mail on July 26, 2023, this argument is inconsistent with - and is belied by - the fact that the Hearing Examiner in the instant matter (CO-2023-050) specifically requested status updates approximately 2-3 months after the PBA's July 26, 2023 e-mail (on September 11th and October 3rd); and the fact that CO-2023-050 is not consolidated with CO-2022-240 and/or CO-2023-114. Indeed, the PBA concedes that it could have responded to the Hearing Examiner's first and/or second status letter in some fashion, including by simply "re-forward[ing] [its July 26, 2023 e-mail] when the [Hearing Examiner] asked for an update." The PBA failed to do so, and has not shown extraordinary circumstances or that a dismissal would create an injustice. Moreover, the PBA has not cited to any legal authority in support of its position.

On December 18, the PBA appealed the Deputy Director's denial of its motion to reopen to the Appellate Division. On February 20, 2024, the Commission participated in a Civil Appeals Settlement Program (CASP) conference with an appellate judge. That conference resulted in the PBA withdrawing its appeal with the Appellate Division and filing the instant appeal with the Commission. The City of Trenton did not file opposition to the PBA's instant appeal.

In the instant appeal, the PBA's counsel certifies that the reason for its non-responsiveness to the Hearing Examiner's September 11 and October 3 status letters was confusion regarding Docket No. CO-2023-050 and several other UPCs, Docket Nos. CO-2022-240 and CO-2023-114, that were simultaneously being handled by other Commission staff agents. The PBA's counsel certifies that while the UPCs were never consolidated, they were being treated as consolidated for the purposes of reaching a global settlement, which is currently still being worked on. The PBA's counsel submits several email threads that indicate that while attempting to reach a global settlement for all the PBA's UPCs, the Hearing Examiner for CO-2023-050 was not copied on those emails, leading to the misunderstanding that CO-2023-050 was not being processed. The PBA's counsel further certifies that one of his partners was attending to his mother's care until her passing on October 25, 2023, which further contributed to the non-responsiveness to the Hearing Examiner's status letters.

As a result of the intervening CASP conference and the PBA's withdrawal of its appeal to the Appellate Division, we grant the PBA's motion to file this appeal out of time. We also grant the PBA's appeal of the Deputy Director's denial of its motion to reopen. Accepting as true the PBA's reasons for its non-responsiveness, the PBA was still under an obligation to respond to the Hearing Examiner's status requests. However, given the

potential confusion and miscommunication created by the treatment of the various UPCs in the global settlement discussions, we find that justice and judicial efficiency will be best served by reinstating CO-2023-050. See N.J.A.C. 19:10-3.1 (“...the commission or such officer shall construe these rules liberally to prevent injustices and to effectuate the purposes of the Act.”) Further, the City of Trenton did not oppose the PBA’s instant appeal, and thus we infer that the City will not suffer any prejudice from reinstating CO-2023-050.

ORDER

The PBA’s motion to file out of time and appeal is granted. Docket No. CO-2023-050 is reinstated and remanded for further processing by the Hearing Examiner.

BY ORDER OF THE COMMISSION

Chair Hennessy-Shotter, Commissioners Eaton, Ford, Higgins, Kushnir and Papero voted in favor of this decision. None opposed. Commissioner Bolandi was not present.

ISSUED: March 28, 2024

Trenton, New Jersey