

H.E. NO. 2008-10

STATE OF NEW JERSEY  
BEFORE A HEARING EXAMINER OF THE  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF HUDSON,

Respondent,

-and-

Docket No. CI-2007-032

PATRICK DESMOND and  
ANTHONY P. LOPEZ,

Charging Parties.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission granted the County of Hudson's Motion to Dismiss for lack of prosecution. Of the two Charging Parties, one faxed the Commission a withdrawal at the time the hearing was about to commence, the other Charging Party failed to appear and never filed a response to the County's motion. As to the Charging Party who failed to appear, the Hearing Examiner recommended that he be sanctioned by the Commission pursuant to N.J.A.C. 19:14-6.12.

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Appearances:

For the Respondent  
Scarinci & Hollenbeck  
(Sean D. Dias, of counsel)

For the Charging Parties  
Patrick Desmond and Anthony P. Lopez (pro se)

**HEARING EXAMINER'S REPORT**  
**AND RECOMMENDED DECISION**

On January 23, 2007, Patrick Desmond and Anthony P. Lopez filed an unfair practice charge, amended on January 31, 2007, against the County of Hudson (County) alleging that the County violated 5.4a(1), (2), (3), (4), (5) and (7)<sup>1/</sup> of the New Jersey

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<sup>1/</sup> 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; (4)

(continued...)

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), when on July 14, 2006, the County attempted to interfere with Charging Parties' rights to attend negotiation committee meetings. The charge contends that on June 30, 2006, Charging Parties were properly voted onto the negotiations committee for District 1199J, NUHHCE, AFSCME, AFL-CIO (District 1199J), the recently elected majority representative of a unit consisting of the County's blue and white collar employees. The charge asserts that the County advised District 1199J that Charging Parties were the only two senior road inspectors employed by the County and that the department would be unduly affected by having both employees released at the same time to attend the negotiations sessions. Charging Parties argue that the County did not object to both Charging Parties being released for attendance at negotiations sessions conducted on July 6 and July 25, 2006. Charging Parties contend that the County did not object to Mr. Desmond's use of vacation time during a period between July 28

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1/ (...continued)

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; (7) Violating any of the rules and regulations established by the commission."

and September 10, 2006, when Mr. Lopez was on sick leave, again leaving the County without an available senior road inspector. Charging Parties assert that the County did not object to other members of the negotiations committee attending negotiations sessions even though no other employees in that particular title remained available to perform their regular County work.

Charging Parties argue that on October 12 and October 26, 2006, Mr. Desmond was required to use personal vacation time to attend the negotiations sessions and be paid for those days. Charging Parties also allege that on October 12, 2006, Mr. Lopez was required to use a personal day to attend negotiations and be paid for the day.

On January 7, 2008, the Director of Unfair Practices issued a Complaint and Notice of Hearing. The Notice of Hearing set April 29, 2008 at 10:00 a.m. at the P.E.R.C. Offices in Newark, New Jersey, as the date, time and place for the hearing to begin. On February 25, 2008, the County served its answer on the Commission with copies by registered mail to the Charging Parties. Neither of the parties requested that the scheduled hearing date or time be modified.

On April 29, 2008, the Commission's Hearing Examiner and the County, along with counsel, appeared at the designated time and location prepared to begin the scheduled hearing. After waiting approximately one half hour, it was learned that both Charging

Parties were at work performing their regular job duties. At approximately 10:45 a.m., I was advised that at 10:00 a.m., the time the hearing in this matter was to commence, the Trenton office had received a fax from Mr. Lopez indicating, among other things, that he felt ". . .it is useless to attend the above mentioned hearing. . . ." I provided the County with a copy of Mr. Lopez's fax. I considered Mr. Lopez's letter as a request to withdraw from the unfair practice charge and granted such request on the record.

Having received no communication from Mr. Desmond, I opened the record and the County moved that the unfair practice charge be dismissed for lack of prosecution. The County argued that this matter had been scheduled months in advance, Charging Parties were aware of the County's intention to litigate the charge as the result of the pre-complaint exploratory conference which Charging Parties attended, and the filing of the County's answer. Additionally, the County asserted that it has incurred costs related to staff time assignments in preparation of the County's defense as well as legal fees.<sup>2/</sup> I reserved my ruling on the County's Motion to Dismiss in order to provide Mr. Desmond with an opportunity to respond. On May 13, 2008, I sent Mr. Desmond a letter, inclusive of a copy of the County's motion made

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<sup>2/</sup> The County also moved that the charge be dismissed on the grounds that it is untimely filed. I find it unnecessary to decide that issue.

on the record, and advised Mr. Desmond that his response was due on or before May 28, 2008. No response has been filed. The County's motion is unopposed.

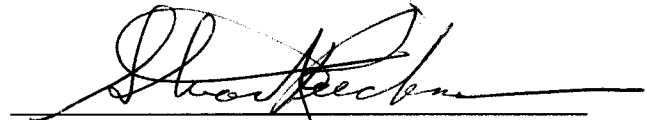
Mr. Desmond's conduct in this matter has been unacceptable. He was provided with ample opportunity to offer some explanation for his failure to appear on the scheduled hearing date to proceed on the unfair practice charge which he filed. He was also provided with an opportunity to respond to the County's motion to dismiss. Accordingly, the County's motion to dismiss the unfair practice charge is granted. Additionally, the County applied for costs to be imposed against Mr. Desmond. The County's application for legal fees is denied. See Commercial Tp. Bd. of Ed., 10 NJPER 78 (¶15043 App. Div. 1983). However, given Mr. Desmond's conduct in this matter, I find sanctions are appropriate. Mr. Desmond's egregious disregard for the time and resources of the Respondent and this Commission warrant rebuke. Consequently, I recommend that the Commission move pursuant to N.J.A.C. 19:14-6.12 to suspend Mr. Desmond from appearing before this Commission in a representational capacity for a period of one year.

#### **RECOMMENDATION**

I recommend that the Commission **ORDER**:

1. This case be dismissed for lack of prosecution.

2. That the Commission act pursuant to N.J.A.C. 19:14-6.12 to suspend Mr. Desmond for a period of one year from appearing before this agency in a representational capacity.



Stuart Reighman  
Hearing Examiner

DATED: June 3, 2008  
Trenton, New Jersey

Pursuant to N.J.A.C. 19:14-7.1, this case is deemed transferred to the Commission. Exceptions to this report and recommended decision may be filed with the Commission in accordance with N.J.A.C. 19:14-7.3. If no exceptions are filed, this recommended decision will become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further. N.J.A.C. 19:14-8.1(b).

Any exceptions are due by June 16, 2008.