

D.U.P. No. 2012-5

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

TOWNSHIP OF EDISON,

Respondent,

-and-

Docket No. CO-2011-286

NEW JERSEY REGIONAL  
COUNCIL OF CARPENTERS LOCAL 821,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by the New Jersey Regional Council of Carpenters against the Township of Edison. The charge, as amended, alleges that on January 31, 2011 the Township violated 5.4a(1) and (3) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act) when it laid off ten unit employees because of their membership in and activities on behalf of the Council. The Director found that no facts suggest that the Township retaliated against Council members in the selection of employees for layoff or by implementing the layoff.

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Appearances:

For the Respondent,  
DeCotiis, Fitzpatrick & Cole, LLP  
(Louis N. Rainone, of counsel)

For the Charging Party,  
Kroll Heineman Carton, attorneys  
(Raymond G. Heineman, of counsel)

REFUSAL TO ISSUE COMPLAINT

On January 25 and May 23, 2011, the New Jersey Regional Council of Carpenters (Council) filed an unfair practice charge and amended charge against the Township of Edison (Township). The charge, as amended, alleges that on January 31, 2011 the Township violated 5.4a(1) and (3)<sup>1/</sup> of the New Jersey Employer-

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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; and, (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  
(continued...)

Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act) when it laid off ten unit employees because of their membership in and activities on behalf of the Council. The Township replies that the reduction in force (RIF) was implemented in order of seniority in compliance with the provisions of the parties' collective negotiations agreement.

The Commission has authority to issue a complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3. On September 7, 2011, I wrote to the parties, advising that I was not inclined to issue a complaint in this matter and set forth the basis upon which I arrived at that conclusion. The parties were provided an opportunity to respond. Neither party filed a response. Based upon the following facts, I find that the complaint issuance standard has not been met.

The Council represents a unit of all regularly employed nonsupervisory public works department employees, excluding those in the sewer division. The Council and the Township are parties

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1/ (...continued)  
guaranteed to them by this act."

to a collective negotiations agreement extending from January 1, 2007 through December 31, 2011.

The Township implemented a RIF effective January 31, 2011. It was accomplished by seniority, pursuant to the terms of the parties' agreement. Ten employees were laid off. After civil service "bumping" rights were applied, the affected employees were: Timothy Leahy, Lawrence Ehnat III, Bruce Knotts, Cory McCormick, John R. Hansen, Brian Schutz, Cory Humphrey, Alan Esposito, Frank Davis, and Hairo Nonon.

#### ANALYSIS

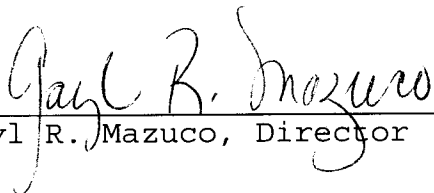
A public employer has a non-negotiable prerogative to reduce the overall number of employees through layoffs. Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981); In re Maywood Bd. of Ed., 168 N.J. Super. 45 (App. Div. 1979), certif. den. 81 N.J. 292 (1979); Union Cty. Reg. H.S. Bd. of Ed. v. Union Cty. Reg. H.S. Teachers Ass'n, 145 N.J. Super. 435 (App. Div. 1976), certif. den. 74 N.J. 248 (1977). But an employer does not have a right to exercise a managerial prerogative for anti-union reasons. Allegations that anti-union animus taint the exercise of a managerial prerogative are reviewed under tests established by our Supreme Court in In re Bridgewater Tp., 95 N.J. 235 (1984).

Under Bridgewater, no violation will be found unless the charging party has proven, by a preponderance of the evidence on

the entire record, that protected conduct was a substantial or motivating factor in the adverse action. This may be done by direct evidence or by circumstantial evidence showing that the employee engaged in protected activity, the employer knew of this activity, and the employer was hostile toward the exercise of the protected rights. Id. at 246.

No facts suggest that the Township retaliated against Council members in the selection of employees for layoff or by implementing the RIF. I dismiss the charge.

By Order of the Director  
of Unfair Practices

  
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Gayl R. Mazuco, Director

DATED: September 28, 2011  
Trenton, New Jersey

**This decision may be appealed to the Commission pursuant to N.J.A.C. 19:14-2.3.**

**Any appeal is due by October 11, 2011.**