

H.E. NO. 2014-5

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

In the Matter of

TOWN OF WESTFIELD,

Respondent,

-and-

Docket No. CI-2012-046

BARRON CHAMBLISS,

Charging Party.

SYNOPSIS

A complaint and notice of hearing was issued regarding N.J.S.A. 34:13A-5.4(a)(1). In a motion for summary judgment filed prior to the hearing, the Town of Westfield contends that the charging party's response to an interrogatory contains all of the material facts needed to resolve the dispute. The charging party opposes the motion contending that the interrogatory response did not contain all of the facts known to the party and there thus exist genuine issues of material facts. A violation of N.J.S.A. 34:13A-5.4(a)(1) requires an examination of the totality of the circumstances. See, State of NJ, P.E.R.C. 2012-024, 38 NJPER 205, 206 (¶70 2011); State of NJ (Dept. of Human Services), P.E.R.C. No 82-83, 8 NJPER 209, 215 (¶13088 1982). Under this standard, the hearing examiner is required to examine all of the parties' conduct which has not yet been presented through witness testimony or other proofs. The motion for summary judgment must be denied.

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Appearances:

For the Respondent,
Apruzzese, McDermott, Mastro and Murphy, attorneys
(Robert J. Merryman, of counsel)

For the Charging Party,
Mets, Schiro and McGovern, LLP attorneys
(James M. Mets, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On September 27, 2012, the Director of Unfair Practices issued a complaint and notice of hearing regarding N.J.S.A. 34:13A-5.4(a)(1) of the New Jersey Employer-Employee Relations Act ("Act"). This provision of the Act prohibits public employers from "Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this [Act]."

On October 10, 2013, respondent Town of Westfield ("Town") filed a motion with supporting brief for summary judgment in accordance with N.J.A.C. 19:14-4.8. The Town did not file

supporting affidavits or certifications. The Town contends that there are no material facts in dispute. It asserts that Chambliss' response to an interrogatory regarding a conversation the Chief had with two other police officers, that was overheard by two secretaries, even if true, fail to establish a violation of N.J.S.A. 34:13A-5.4(a)(1).

On October 21, 2013, charging party Barron Chambliss ("Chambliss") filed a brief opposing the motion. Chambliss asserts that there exist genuine issues of material facts. He states that the Chief, two police officers, and two secretaries have not testified, and thus the response to the interrogatory "does constitute the universe of facts known" to the two secretaries. Chambliss also contends that the Town misconstrues the N.J.S.A. 34:13A-5.4(a)(1) standard in requiring proof of actual interference and also incorrectly places the burden on him to prove that there was no legitimate and substantial business justification for the Chief's statements regarding him.

Public employers are prohibited from "Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act." N.J.S.A. 34:13A-5.4(a)(1). The Commission has determined that: "It shall be an unfair practice for an employer to engage in activities which, regardless of the absence of direct proof of anti-union bias, tend to interfere with, restrain or coerce an employee in the exercise of rights

guaranteed by the Act, provided the actions taken lack a legitimate and substantial business justification." New Jersey College of Medicine and Dentistry, P.E.R.C. No. 79-11, 4 NJPER 421, 422-423 (¶4189 1978); New Jersey Sports and Exposition Authority, P.E.R.C. No. 80-73, 5 NJPER 2 550, 551 note 1 (¶10285 1979). In Commercial Tp. Bd. Ed. and Commercial Tp. Support Staff Assn. and Collingwood, P.E.R.C. No. 83-25, 8 NJPER 550, 552 (¶13253 1982), aff'd 10 NJPER 78 (¶15043 App. Div. 1983), the Commission held that proof of actual interference, intimidation, restraint, coercion or motive is unnecessary to prove an independent N.J.S.A. 34:13A-5.4(a)(1) violation. The tendency to interfere is sufficient. UMDNJ-Rutgers Medical School, supra; Mine Hill Tp., P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986).

Summary judgment may be granted 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 is entitled to its requested relief as a matter of law. N.J.A.C. 19:14-4.8(e). "All inferences of doubt are drawn against the moving party and in favor of the opponent of the motion." Perez v. Professionally Green, LLC, 215 N.J. 388, 405 (2013) (citations omitted); Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995); Borough of Paramus, P.E.R.C. No. 2010-5, 36 NJPER 78 (¶36 2010). The motion cannot be granted if material facts are in dispute. Dolson v.

Anastasia, 55 N.J. 2 (1959); North Bergen, P.E.R.C. No. 78-28, 4 NJPER 15 (¶4008 1978); N.J. Turnpike Auth. , P.E.R.C. No. 79-81, 5 NJPER 197 (¶10112 1979).

Here, the Town contends that the charging party's response to the interrogatory contains all of the material facts needed to resolve the dispute. I disagree. A violation of N.J.S.A. 34:13A-5.4(a)(1) requires an examination of the totality of the circumstances. See, State of NJ, P.E.R.C. 2012-024, 38 NJPER 205, 206 (¶70 2011); State of NJ (Dept. Of Human Services), P.E.R.C. No 82-83, 8 NJPER 209, 215 (¶13088 1982). Under this standard, I am required to examine all of the parties' conduct which has not yet been presented through witness testimony or other proofs. The motion for summary judgment must be denied.

ORDER

The motion for summary judgment is denied.


Daisy B. Barreto
Hearing Examiner

Dated: November 12, 2013
Trenton, New Jersey

For Summary Judgement

Pursuant to N.J.A.C. 19:14-4.8(e) this ruling may only be appealed to the Commission by special permission in accordance with N.J.A.C. 19:14-4.6.

Any request for special permission to appeal is due by November 19, 2013.