

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

In the Matter of

COUNTY OF MIDDLESEX,

Respondent,

-and-

Docket No. CE-2004-009

MIDDLESEX COUNTY PARK RANGER
ASSOCIATION,

Charging Party.

Appearances:

For the Respondent,
Thomas F. Kelso, County Counsel
(Benjamin D. Leibowitz, Deputy County Counsel)

For the Charging Party,
Loccke & Correia, attorneys
(Michael A. Bukosky, of counsel)

HEARING EXAMINER'S DECISION
ON MOTION REQUESTING TO DEEM
ALLEGATIONS IN COMPLAINT ADMITTED

On December 30, 2003, the County of Middlesex (County) filed an unfair practice charge against the Middlesex County Park Rangers Association (Association). The charge alleges that the Association violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4b(3) and (5),^{1/}

^{1/} These provisions prohibit employee organizations, their representatives or agents from: "(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees (continued...)"

by filing for compulsory interest arbitration in contravention of the parties settlement agreement in a representation matter. The County also contends that the interest arbitration filing was done in bad faith to delay the submission of the County's final offer in contract negotiations and imposition of a collective agreement.

On March 5, 2004, a Complaint and Notice of Hearing issued. The cover letter to the parties reminded the Respondent Association of its obligation to file an Answer and that, if no Answer was filed, or if the Answer does not specifically admit, deny or explain each of the allegations set forth in the Complaint, then the allegations in the Complaint would be deemed to be admitted to be true. N.J.A.C. 19:14-3.1.

On March 8, 2004, the Chairman of the Commission granted the County's request for a hearing to determine whether the Association was entitled to interest arbitration pursuant to its petition for compulsory interest arbitration under docket no. IA-2004-024 and consolidated the matter for hearing with the County's unfair practice charge.

On March 16, 2004, the Association filed an unfair practice charge against the County. The charge alleges that the County

1/ (...continued)
in that unit. (5) Violating any of the rules and regulations established by the commission."

violated the Act, specifically 5.4a(1), (2), (5) and (7),^{2/} by altering the duties and limiting the police activities of park rangers in order to deprive them of the right to interest arbitration.

On March 16, 2004, the Association also filed its Answer to the County's charge. The Answer in pertinent part states:

As to Paragraphs 1 through 16, the Park Ranger Association neither admits nor denies such allegations, but leaves Petitioner to its proofs.

The Answer sets forth no affirmative defenses. There is no sworn statement or certification attesting to the truth of the statements contained in the Answer. There is no proof of service although the cover letter accompanying the filing indicates that the County was copied.

On March 24, 2004, the County by letter to the Hearing Examiner requested that the allegations in the Complaint be deemed to be admitted as true because the Answer did not conform

^{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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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."

to Commission rules under N.J.A.C. 19:14-3.1.^{3/} By letter of March 24, 2004, the Association was afforded an opportunity to respond to the motion by April 7, 2004. No response was received.^{4/}

N.J.A.C. 19:14-3.1 states in relevant part:

The answer shall specifically admit, deny or explain each of the allegations set forth in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a specific denial. All allegations in the complaint, if no answer is filed, or any allegation not specifically denied or explained shall be deemed to be admitted to be true and shall be so found by the hearing examiner and the Commission, unless good cause to the contrary is shown. The answer shall include a detailed statement of any affirmative defenses.

In Borough of Glassboro, P.E.R.C. No. 86-141, 12 NJPER 517, (¶17193 1986) the Borough filed an Answer stating "All of the allegations set forth in the paragraph of the charge constituting the substantive portion of the Complaint are denied." In

3/ The County also requested that it be granted summary judgment. By letter dated March 24, 2004, I informed the County that if it wanted to file a motion for summary judgment, it must comply with our rules for filing and content. N.J.A.C. 19:14-4.8. Since it had not yet complied, its motion could not be considered at this time.

4/ On March 31, 2004, a Complaint and Notice of Hearing was issued on the Association's charge. An Order Consolidating Cases was also issued consolidating the Association's charge and the petition for compulsory interest arbitration with the Complaint and Notice of Hearing issued on the County's charge.

considering whether this Answer complied with the rules, the Commission stated:

This Answer is woefully inadequate and does not comply with N.J.A.C. 19:14-3.1. . . The purpose of this rule is obvious: it clarifies the issues for hearing and saves time. It would not burden respondent to have followed it. For instance, it would not have been difficult for the Borough to admit terminating Brown and Bryant, but denying that it was for their union activities. Failure to comply with this rule authorizes the Commission to deem allegations to be true. We will not do so in this case since the charging party did not raise it, but will not hesitate to do so in the future. [Id. at 520 at n.2.]

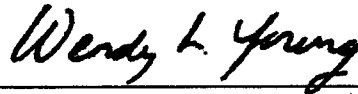
Similarly, in Dover Township Bd. of Ed., H.E. No. 86-44, 12 NJPER 252 (¶17106 1986), a Hearing Examiner on motion deemed certain allegations of the Complaint as true where the Answer neither admitted nor denied but left charging party to its proofs. See also, Borough of Somerville, P.E.R.C. 93-35, 19 NJPER 1 (¶24000 1992). Cf. South Amboy Bd. of Ed., P.E.R.C. No. 87-125, 13 NJPER 303 (¶18127 1987) (where Commission found Answer sufficient although the equivalent of general denial because it set forth that teachers had written guides for years and the issue of guides had been negotiated but withdrawn in fact finding and set forth a number of affirmative defenses.); City of Newark, P.E.R.C. No. 88-84, 14 NJPER 243 (¶19089 1988) (City's position statement accepted as sufficient Answer where City specifically requested it be accepted as its Answer and, despite its

informality, the statement responded to each allegation setting forth the City's defense).

Here, the Association's Answer does not conform with the Rule requirements. Most importantly, the Association has not specifically admitted, denied or explained each of the County's allegations contained in the complaint, nor has it indicated it is without knowledge. It contains no detailed statement of any affirmative defenses. The cover letter to the Complaint set forth the requirements of N.J.A.C. 19:14-3.1 and put the Association on notice that failure to comply with the Rule requirements had consequences. It has not complied.

ORDER

The allegations contained in the Complaint under docket no. CE-2004-009 are deemed to be admitted as true pursuant to N.J.A.C. 19:14-3.1.



Wendy L. Young
Hearing Examiner

Dated: April 12, 2004
Trenton, New Jersey