H.E. No. 2011-5

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

In the Matter of

CAMDEN COUNTY,

Respondent,

-and- Docket No. CO-2010-111

CAMDEN COUNCIL NO. 10 and CAMDEN COUNTY SUPERVISORY UNIT OF CAMDEN COUNTY COUNCIL NO. 10,

Charging Parties.

SYNOPSIS

A Hearing Examiner grants in part Council 10/Supervisory Unit's motion for summary judgment on the ground that the County Administrator made coercive comments to unit members regarding contract negotiations. Under the circumstances of the case, the Hearing Examiner finds the statements violated 5.4a(1) of the Act. The Hearing Examiner denies the motion with regard to the alleged violations of 5.4a(2) and (5). A plenary hearing is needed to resolve disputed material facts associated with those allegations.

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Charging Parties.

Appearances:

For the Respondent,
Michael G. Brennan, County Counsel
(Howard S. Wilson, Assistant County Counsel)

For the Charging Parties,
Spear Wilderman, attorneys
(James Katz, of counsel)

HEARING EXAMINER'S RECOMMENDED REPORT
AND DECISION ON MOTION FOR SUMMARY JUDGMENT

On January 26, 2010, the Director of Unfair Practices issued a Complaint and Notice of Hearing on a charge filed by Camden County Council No. 10 (Council 10) and Camden County Supervisory Unit of Camden County Council No. 10 (Supervisory Unit) against Camden County (County). The charge alleges that the County violated subsections 5.4a(1), (2) and (5)[1/] of the New Jersey

1/ These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the (continued...)

Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., by negotiating in bad faith for a successor agreement, and by making threats in the press and sending a coercive letter to the homes of negotiations unit members regarding contract negotiations. The County filed an Answer on February 8, 2010.[2/]

On May 6, 2010, Council 10 and Supervisory Unit (also referred to as Council 10/Supervisory Unit) filed a motion for summary judgment with the Commission. After being granted an extension to reply, the County filed its answering brief and certification on June 2, 2010. Pursuant to N.J.A.C. 19:14-4.8(a), the motion was referred to me on September 2, 2010.

For the reasons stated hereinbelow, I grant Council 10/Supervisory Unit's motion for summary judgment in part and deny it in part. I find that as a matter of law the County violated subsection 5.4a(1) of the Act when it sent a letter

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1/ (...continued)
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."

2/ The County's Answer did not contain a certification as required by N.J.A.C. 19:14-3.1. In its brief in support of its motion for summary judgment, Council 10/Supervisory Unit argues that all of the allegations contained in the Complaint should be deemed admitted as true. Subsequently, the County provided a certification and requested that its Answer be amended accordingly. N.J.A.C. 19:14-3.3 permits an answer to be amended any time before hearing. I shall allow the amendment, N.J.A.C. 19:14-3.3.

containing coercive statements regarding contract negotiations directly to the homes of negotiations unit members. I deny the motion with regard to the alleged violation of 5.4a(2), (dominating or interfering with the administration of Council 10/Supervisory Unit), and the alleged violation of 5.4a(5), (negotiating in bad faith).

The following facts are undisputed by the parties:

Council 10 is a public employee organization that represents various civilian workers employed by the County. The Supervisory Unit is affiliated with Council 10 and represents supervisors employed by the County. There are approximately 844 employees represented by Council 10 covered under four separate labor contracts: (1) large unit of non-uniform employees, (2) craft employees, (3) blue collar workers and (4) Mosquito Commission employees. There are about 56 supervisors represented by the Supervisory Unit under a separate contract.

All five agreements expired on December 31, 2007. Between December 2007 and April 2009, the parties met on numerous occasions to negotiate successor contracts. In April 2009, the County presented a new health insurance proposal during negotiations. Among other things, the proposal consisted of employee contributions toward health insurance costs based on percentages of insurance premiums depending upon the health plan selected by employees. The County also presented a wage proposal

of a 2% increase in 2008, 0% in 2009 and 2.25% increase for 2010. Council 10 and Supervisory Unit proposed employee health contributions based on a percentage of salary depending upon the health plan selected.

During the next four months, Council 10 and the County continued to negotiate and tried to resolve a number of issues. The County and Supervisory Unit did not negotiate during this time.

In late August 2009, the County conveyed to Council 10 a new health insurance proposal. Under the new proposal, employee contributions to premium would be based upon a percentage of premium and income. The County also changed its wage increase proposal to 3.5% for 2008; 0% for 2009, 2.5% for 2010 and 2.75% for 2011. At that time, numerous other issues discussed in negotiations remained outstanding. The employee contribution to health insurance cost proposal was discussed with the Council 10 large unit during negotiations on September 3, 2009 and with the craft, blue collar and Mosquito Commission units at their negotiating session on September 9, 2009. The next negotiations session with the large unit was scheduled for October 2, 2009 and the next one with the craft, blue collar and Mosquito Commission was scheduled for October 5, 2009.

The County and Supervisory Unit had not held negotiations since April 8, 2009. On October 7, 2009, the County presented a new health insurance and wage proposal to the Supervisory Unit.

On September 18, 2009, Council 10/Supervisory Unit held a demonstration at a County Freeholder meeting protesting and publicly criticizing the manner in which the County was conducting negotiations.

A few days later, an article entitled, *Camden County Issues Contract Ultimatum*, appeared in the September 22, 2009 edition of the Courier Post newspaper. The article discussed the status of contract negotiations between the County and Camden Council 10/Supervisory Unit. In it, the County Administrator reportedly said:

> At this point, to protect taxpayers, we have put a deadline of Oct. 15 on negotiations. If the deadline passes, one half of the offer of the retroactive (3.5 percent) pay raise in 2008 comes permanently off the table.
>
> Twenty-one months we've been without a contract. (Taypayers are) paying health care under the old contract. The $1.7 million that the taxpayers get a benefit of, that's not going to go retroactive to Jan. 1, 2008. But Council 10 is absolutely demanding that their raise go back that far. Now if you are a taxpayer, that's not fair. We need to put an end to this.

Subsequent to the Courier Post article, on September 25, 2009, the County Administrator sent a two-page letter to the homes of each negotiations unit member in the supervisory, large,

craft, blue collar and Mosquito Commission units. In the letter he wrote:

> As a follow-up to the recent Courier-Post article concerning the status of negotiations with Council #10, I want to take this opportunity to clarify management's offer at the negotiating table and how it will affect you.

The County Administrator also described the four main components of the County's offer (contribution to health insurance, salary increases, elimination of steps for future employees and elimination of sick time sell back) and wrote in conclusion:

> At this point, the Freeholders must protect the interests of taxpayers while offering this fair deal to employees. It would be unfair to County taxpayers if they were required to pay a retroactive salary increase for 2008 without receiving the benefit of new employee contributions toward the cost of healthcare.
>
> **Accordingly, as of October 15, 2009, the County's offer of retroactive pay for the first half of 2008 will be permanently withdrawn and that money will be dedicated toward the increased cost of employee health benefits.** [Original in bold print]
>
> Although there are other issues to be resolved, the foregoing are the major areas of disagreement. Management remains committed to the negotiation process and looks forward to working with Council #10 to achieve a balanced contract.

This was the first time that the County Administrator had ever written a letter to unit members regarding contract

negotiations. Council 10/Supervisory Unit did not receive a copy of the letter.

One of the County's goals in this round of negotiations for successor agreements was to require that all employees contribute to the cost of their health insurance and eliminate free health insurance plans. Between December 2005 and December 2009, the County successfully negotiated successor contracts with ten unions other than Council 10/Supervisory Unit, all of which included a provision requiring employees contribute to the cost of health insurance based on a percentage of insurance premium. However, no union had executed a contract with the County which included the employee contribution proposed by the County in August 2009. In fact, the County's August 2009 health insurance proposal was withdrawn a few months after it was made.

The County and the Supervisory Unit signed a new contract on December 15, 2009. The other four Council 10 negotiations units in this case are still negotiating with the County for successor agreements.

The parties dispute the following material fact: whether the County ever proposed to Council 10/Supervisory Unit leadership during negotiations a reduction in retroactive pay if an agreement was not reached by a certain deadline. Council 10 and Supervisory Unit have certified that the County never made such a proposal and that the first they learned of it was by its

appearance in the September 22, 2009 Courier Post article. The County has certified that its lead negotiator told Council 10's negotiations committee of the proposal on two separate occasions in the early spring and summer of 2009 and the Supervisory Unit's negotiating committee once. In addition, the County has certified that during a meeting held on August 26, 2009, its lead negotiator advised the President of Council 10 that if the parties could not reach agreement on contribution to premium by September 15, 2009, six months of retroactivity of any salary increase would no longer be available.

ANALYSIS

Summary judgment will be granted if there are no material facts in dispute and the movant is entitled to relief as a matter of law. N.J.A.C. 19:14-4.8(e); Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995); Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 73-75 (1954). In determining whether summary judgment is appropriate, we must view the evidence submitted in connection with the motion in the light most favorable to the party opposing the motion. The summary judgment procedure is not to be used as a substitute for a plenary trial. Baer v. Sorbello, 177 N.J. Super. 182 (App. Div. 1981); UMDNJ, P.E.R.C. No. 2006-51, 32 NJPER 12 (¶16 2006).

Council 10/Supervisory Unit argues that the County violated the Act when the County Administrator gave a press interview and

sent a letter to the homes of all negotiations unit members stating that one-half of the retroactive 3.5% pay increase for 2008 would be permanently withdrawn if the parties did not reach agreement by October 15th. Council 10/Supervisory Unit maintains that the County deliberately bypassed the union by publicly making the statement and directly communicating it to its members. The statement, Council 10/Supervisory Unit contends, is inherently coercive and designed to undermine and interfere with its leadership, especially when taken in the context of protracted and contentious negotiations and announced right before the next negotiations sessions.

The County maintains that it has the right to directly communicate with its employees regarding the status of contract negotiations. It asserts that the motion must be denied because there are material facts in dispute with regard to whether it discussed the issue of withdrawing retroactive pay increases with Council 10/Supervisory Unit prior to the press interview announcement and the letter sent to bargaining unit employees.

N.J.S.A. 34:13A-5.4 provides in pertinent part:

> a. Public employers, their representatives or agents are prohibited from:
>
> (1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act.

An independent violation of subsection 5.4a(1) of the Act will be found if an employer's action tends to interfere,

restrain or coerce an employee's statutory rights and lacks a legitimate and substantial business justification. Orange Bd. of Ed., P.E.R.C. No. 94-124, 20 NJPER 287 (¶25146 1994); New Jersey Sports and Exposition Authority, P.E.R.C. No. 80-73 5 NJPER 550, 551 n.1 (¶10285 1979). Neither illegal motive nor actual interference need to be proven to establish an a(1) violation. Orange Bd. of Ed.; Commercial Tp. Bd. of Ed., P.E.R.C. No. 83-25, 8 NJPER 550, 552 (¶13253 1982). It is the tendency to interfere and not motive or consequences that is essential for finding a violation. City of Hackensack, P.E.R.C. No. 78-71, 4 NJPER 190, (¶4096 1978), aff'd App. Div. Docket No. A-3562-77 (3/5/79).

The Act permits public employers to express opinions about labor relations provided such statements are not coercive. An employer has the right to advise employees of the status of contract negotiations as long as the communication does not contain a threat of reprisal or promise of benefits. In analyzing speech cases, the total context in which the statements were made must be taken into consideration. State of New Jersey (Trenton State College), P.E.R.C. No. 88-19, 13 NJPER 720 (¶18629 1987); Mercer County, P.E.R.C. No.86-33, 11 NJPER 589 (¶16207 1985), adopting analysis in H.E. No. 85-45, 11 NJPER 395 (¶16140 1985); Camden Fire Dept., P.E.R.C. No. 82-103, 8 NJPER 309 (¶13137 1982); Black Horse Pike Reg. Bd. of Ed., P.E.R.C. No. 83-

19, 7 NJPER 502 (¶12223 1981); Tp. of South Orange Village, D.U.P. 92-6, 17 NJPER 466 (¶22222 1991).

Here, in reviewing the evidence in the light most favorable to the County, I find that the County violated subsection 5.4a(1) of the Act. The timing and manner in which the County Administrator issued his statements tends to interfere and coerce rights guaranteed to employees under the Act without a substantial business justification.

The parties were engaged in protracted and contentious contract negotiations. The County made a new wage and health benefit proposal to Council 10 in late August 2009. On September 18, 2009, Council 10/Supervisory Unit held a public demonstration during a County Freeholder meeting. Four days after the demonstration and no more than a month after introducing its new wage and health benefit proposal, the County announced in the Courier Post its intention to reduce retroactive pay if a deal is not agreed to by October 15, 2009. Three days thereafter, on September 25th, precisely one week before the next scheduled negotiations session with Council 10, the County issued a letter to all bargaining unit members at their homes giving them personal notice of its intention to permanently remove a portion of retroactive pay from its offer. In the two-page letter, the only paragraph printed in boldface advises that retroactive pay will be reduced if an agreement is not reached by October 15th.

Never before had the County Administrator written directly to his employees, all bargaining unit members, regarding the status of contract negotiations. A copy of the County's letter was not provided to Council 10/Supervisory Unit leaders. After examining the totality of circumstances in which the statements were made, I find them to be coercive, threatening reprisal if an agreement is not reached by October 15th. I further find that the October 15 deadline was purely arbitrary and its selection tended to interfere with negotiations without a substantial business justification.

The County relies on Tp. of South Orange Village. There, the Director of Unfair Practices found that statements regarding contract negotiations made by the Township Administrator in a letter sent directly to bargaining unit members were not coercive and not violative of the Act. Like the letter at issue in Tp. of South Orange Village, there are non-threatening, non-coercive statements made in the letter at issue here. For example, the County Administrator wrote in his September 25, 2009 letter such statements as ". . . I want to take this opportunity to clarify management's offer . . .", and "Management remains committed to the negotiation process and looks forward to working with Council #10 to achieve a balanced contract." But, each case must turn on its own particular facts and circumstances, and here I find that the non-coercive statements do not extinguish or mitigate the

tendency of the offending statements to interfere with the rights guaranteed under the Act. Accordingly, I find an independent violation of subsection 5.4a(1) of the Act and grant Council 10/Supervisory Unit's motion for summary judgment in part.

I deny the motion for summary judgment on the alleged 5.4a(2) and (5) violations. The disputed facts centering around what was discussed between the parties during negotiations regarding the reduction of retroactive pay bear on those determinations. Generally, I need a more developed record regarding negotiations upon which to base my decision. I will schedule a hearing so that the parties have an opportunity to introduce more evidence on those issues.

ORDER

The motion for summary judgment is granted on the a(1) violation and denied as to the alleged a(2) and (5) violations. I will issue a remedial order at the conclusion of the case.

Perry O. Lehrer
Hearing Examiner

DATED: December 6, 2010
Trenton, New Jersey

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 December 16, 2010.