

P.E.R.C. NO. 80-61

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CAPE MAY,

Respondent,

-and-

Docket No. CO-79-207-51

P.B.A. LOCAL 59,

Charging Party.

SYNOPSIS

The Commission affirms a finding by its Hearing Examiner, H.E. No. 80-10, 5 NJPER ____ (¶ ____ 1979), that the PBA failed to prove by a preponderance of the evidence that the City had discriminatorily laid off members of the PBA unit in order to force the acceptance of the use of superior officers on patrol duty.

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Appearances:

For the Respondent, Gerald L. Dorf, P.A.
(Mr. David A. Wallace)

For the Charging Party, Schneider, Cohen &
Solomon, Esqs., (Mr. David Solomon)

DECISION AND ORDER

P.B.A. Local 59 (the "PBA") filed an Unfair Practice Charge with the Public Employment Relations Commission on February 9, 1979 alleging that the City of Cape May (the "City") had violated cited sections ^{1/} of the New Jersey Employer-Employee Relations Act (the "Act"). It appearing that the allegations of the charge, if true, might constitute an unfair practice within the meaning of the Act, a Complaint and Notice of Hearing was issued on March 6, 1979. A hearing was held on May 14, 1979 before Commission Hearing Examiner Edmund G. Gerber, who issued his Recommended Report and Decision ^{2/} on September 25, 1979.

1/ The charge alleges violations of N.J.S.A. 34:13A-5.4(a)(1) and (3). The charging party withdrew an allegation that N.J.S.A. 34:13A-5.4(a)(5) had been violated.

2/ H.E. No. 80-10, 5 NJPER _____ (¶ _____ 1979). A copy of that report is attached hereto and made a part hereof.

The P.B.A. alleged that the City violated the Act by laying off members of the P.B.A. unit thereby discriminating against the members to be laid off. The P.B.A. asserted that the lay-offs had been planned in order to compel the union to accept the use by the City of superior officers on patrol duty.

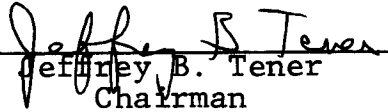
The Hearing Examiner found that the PBA had failed to prove its allegations by a preponderance of the evidence and he recommended that the complaint be dismissed in its entirety. This recommendation was based on his factual findings including the fact that the City had financial difficulties, that several other City employees had been layed off, and that the lay-off notices had been given to the affected employees prior to the time that the PBA had filed grievances concerning the use of superior officers to do patrol duty. He concluded that, even accepting the PBA's version of events, the City's attempt to link a rescission of the lay-offs with PBA's acquiescence in the use of superior officers for patrol duty was not violative of the Act and instead constituted an effort to resolve problems which were connected to it.

Neither party filed exceptions to the Hearing Examiner's Recommended Report and Decision. N.J.A.C. 19:14-7.3(b) provides that, "Any exception which is not specifically urged shall be deemed to have been waived." Noting the absence of exceptions to the Hearing Examiner's Recommended Report, we hereby adopt that report and shall order the dismissal of the complaint.

ORDER

Upon the entire record in this proceeding IT IS HEREBY ORDERED that the complaint herein be dismissed in its entirety.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett, Hipp, Newbaker and Parcels voted for this decision. Commissioner Graves was not present.

DATED: Trenton, New Jersey
October 31, 1979
ISSUED: November 1, 1979

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

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-and-

Docket No. CO-79-207-51

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Charging Party.

SYNOPSIS

In a proceeding before a Hearing Examiner of the Public Employment Relations Commission, it was recommended that the Commission dismiss the complaint which alleged the city of Cape May laid off a patrolman of the police department in order to force the PBA into abandoning its position in negotiations that superior officers may not be assigned to patrol duty. The evidence introduced by the PBA was not sufficient to establish such an unlawful motivation on the part of the city.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

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Docket No. CO-79-207-51

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Charging Party.

Appearances:

For the City of Cape May
Gerald L. Dorf, P.A.
(David A. Wallace, Esq.)

For P.B.A. Local 59
Schneider, Cohen & Solomon, Esqs.
(David Solomon, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

On February 9, 1979, the Patrolmen's Benevolent Association Local 59 (PBA) filed an Unfair Practice Charge with the Public Employment Relations Commission (Commission) alleging that the City of Cape May (City) laid off members of the PBA unit, thereby interfering with the rights of its members guaranteed to them by the Public Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-5.4(a)(1) and (3). ^{1/} ^{2/} It appearing that the allegations of the charge, if true, might constitute an unfair practice within the meaning of the Act a Complaint and Notice of Hearing was issued in this matter on March 6, 1979. A hearing was held May 14, 1979, and the transcripts received at the Commission's

^{1/} Section 5.4(a)(1) prohibits employers from "Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act"; section 5.4(a)(3) prohibits employers from "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."

^{2/} It was also alleged in the original charge that the City refused to meet in negotiations with the PBA in violation of section 5.4(a)(5), but this part of the charge was withdrawn at the hearing.

offices on July 13, 1979. All parties were given an opportunity to present evidence, examine and cross-examine witnesses and present briefs.

On December 23, 1978, Patrolman James Goodman and a second patrolman, ^{3/} both members of the unit represented by the PBA, were notified they would be laid off effective February 8, 1979. The two patrolmen were the two lowest-ranking officers on the Civil Service list and neither was active in negotiations.

During this same period of time the City and the PBA were engaged in collective negotiations for a successor agreement. One of the issues on the table concerned a contract provision that "There shall be a minimum of two members of the unit on patrol at all times." In 1975, pursuant to a grievance filed by the PBA, an arbitrator held that superior officers, the lieutenant, captain and chief, were not part of the unit within the meaning of the contract and, therefore, the City could not assign superior officers to patrol duty in order to satisfy the contract. The City took the position during the ongoing negotiations that this provision is non-negotiable because it involves minimum manning. They demanded that it be removed from the contract and they assigned superior officers to patrol duty contrary to the arbitrator's ruling. In response, in January 1979, the PBA filed three separate grievances concerning the City's action. ^{4/}

The PBA claimed that the layoffs were instituted in order to coerce the union into abandoning its position on the use of superior officers on patrol. To demonstrate their position they introduced testimony concerning two conversations.

Three days before the scheduled layoff, on February 5, Goodman and Sgt. James Fiocca attended a City Council meeting. After the meeting the two officers met with City Councilman Fred Coldren to talk about the layoffs. Both officers testified that Coldren stated some of the problems in the police department were related to "dead wood" in the department and that the layoffs would be rescinded if the grievances were dropped.

Patrolman Ralph Bakley testified on behalf of the PBA that he had a meeting about the layoffs with Mayor Blomkvest, the sheriff and the captain. He testified that it was the mayor's position that the layoffs were necessary because

^{3/} This second patrolman later resigned from the police force and his position as police officer is not in issue in this matter.

^{4/} Neither of the officers who received layoff notices were involved in these grievances.

the City was going to lose \$138,000 in Federal aid but if Bakley showed him how this money could be saved he would reconsider the layoffs. At a subsequent meeting Bakley claims that he showed the mayor how he could save \$190,000 by taking such actions as not buying new patrol cars and minimizing police attendance at court on off-duty hours. But Blomkvest reneged and refused to reconsider the layoffs.

The witnesses for the City acknowledged that the conversations in question took place but they disputed what was said. In general, the City disputes the reasons for the layoffs. Its position, as testified to by Mayor Blomkvest, Councilman Coldren and City Manager Cabana, was that the City lost \$138,000 in Federal anti-recession funds. Since this money came from outside the city it was outside of the limits established by the State Cap Laws on spending but the funds needed to replace this lost money had to come from within the city and was subject to the Cap Law. The effect was to draw an equal amount of money away from existing funds over and above the actual lost revenues. In addition, the police budget had increased by \$100,000. The result of all this was that the City had to lay off a number of City employees outside as well as inside the police department and take other economy measures.

Neither Blomkvest nor Coldren nor any of the other City Council members were involved in negotiations; rather, the City Manager, Cabana, handled all negotiations exclusively.

Blomkvest acknowledged that there was a problem with an emergency allocation of overtime pay within the police department. The total of overtime pay was \$29,000 but only \$15,000 was allocated in the budget. If the superior officers could fill in on partial duty to cover weekdays and vacation days, much of this money could be saved. But he claimed that the decision to lay off the patrolmen was not based upon patrol assignments for superior officers.

Blomkvest testified that Bakley did claim that by following his proposals the City could save \$192,000. But Bakley did not demonstrate how he arrived at these figures and Blomkvest did not accept Bakley's claim.

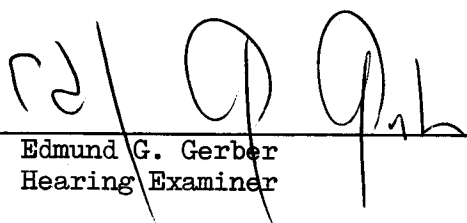
Coldren testified about his meeting with Goodman and Fiocca. He claimed that at this meeting he reviewed the City's budget problems with the two men. He admitted that he stated that it was within the power of the PBA to solve a lot of the City's financial woes by merely changing their position on the patrol issue but he denied tying this reference directly to the two layoffs.

Analysis

It is undisputed the City had financial difficulties; several other City employees besides police officers were laid off. Significantly, the layoff notices were given before the PBA filed its three grievances concerning superior officers doing patrol duty. The only direct evidence tying the layoffs to the grievances was the conversation between Goodman, Fiocca and Coldren. This conversation took place approximately six weeks after Goodman received his notice of layoff, the conversation was initiated by Goodman just three days prior to his actual layoff and, accordingly, it is difficult to see how the conversation was part of a set up to get the PBA to drop the grievances under these facts. Even if the PBA version of this conversation is accurate, such a statement, "drop the grievance and we'll rescind the layoffs," was not intimidation. Under the circumstances the statement was no more than an offer of settlement of two interrelated problems. Accordingly, I will recommend to the Commission that they dismiss the Complaint in this matter in its entirety.

Recommended Order

For the reasons set forth above it is hereby recommended that the Commission issue the following recommended order: The Complaint is dismissed in its entirety.


Edmund G. Gerber
Hearing Examiner

DATED: Trenton, New Jersey
September 25, 1979