

STATE OF NEW JERSEY  
MERIT SYSTEM BOARD  
AND  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of	:	
	:	
EUBIA BETHEA, GARY O'SHEA,	:	
CHRISTOPHER ROMEO, PAUL ZIELINSKI	:	
	:	JOINT ORDER
Appellants,	:	ON CONSOLIDATION AND
	:	PREDOMINANT INTEREST
v.	:	OAL Docket No. CSV 5508-92
	:	
CITY OF WILDWOOD	:	
	:	Respondent.
	:	
<hr/> CITY OF WILDWOOD	:	
	:	Respondent,
	:	
-and-	:	PERC Docket No. CO-H-93-39
	:	
CAPE MAY COUNTY LODGE NO. 7,	:	
FRATERNAL ORDER OF POLICE	:	
	:	
Charging Party.	:	
	:	

SYNOPSIS

In a Joint Order involving the City of Wildwood, FOP Lodge No. 7 and Eubia Bethea, Gary O'Shea, Christopher Romeo and Paul Zielinski, the Public Employment Relations Commission and the Merit System Board order the following: that an appeal before the Board and an unfair practice charge before the Commission be consolidated for hearing before a Hearing Examiner of the Commission; that the Commission issue the final decision on whether the City repudiated the collective negotiations agreement or was illegally motivated by anti-union animus when it hired special police while failing to retain members of the FOP's negotiations unit as permanent officers; that the Commission make the initial decision whether protected activity was a substantial or motivating factor in the City's decision to terminate Eubia Bethea, Gary O'Shea, Christopher Romeo and Paul Zielinski; that if the Commission finds that protected activity was a substantial or motivating factor, the Merit System Board will then determine whether the same action would have taken place even in the absence of the protected activity, and if the employer's actions were in good faith under Department of Personnel law; and that in the event it is found that the terminations would not have taken place even in the absence of the protected activity, the matter will then be returned to the Commission for its consideration of specialized remedial relief under its Act; and that if the Commission finds that protected activity was not a substantial or motivating factor in the City's decision to terminate Eubia Bethea, Gary O'Shea, Christopher Romeo and Paul Zielinski, the Merit System Board will then determine whether the terminations were in good faith under Department of Personnel law.

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Appearances:

For the Charging Party and Appellants, Selikoff & Cohen, attorneys (Steven R. Cohen, of counsel)

For the Respondent, DeMaria, Ellis, Hunt, Salsberg & Friedman, attorneys (Brian N. Flynn, of counsel)

Eubia Bethea, Gary O'Shea, Christopher Romeo and Paul Zielinski were terminated by the City of Wildwood. Cape May County Lodge No. 7, Fraternal Order of Police ("FOP") appealed to the Department of Personnel claiming that the terminations were not in good faith because the decision to implement the layoffs allegedly stemmed from anti-union animus. The matter was transferred to the

Office of Administrative Law as a contested case. The FOP also filed an unfair practice charge. Count One alleges that the layoffs were motivated by anti-union animus. Count Two alleges that the City repudiated the collective negotiations agreement by hiring special police while failing to retain members of the FOP's negotiations unit as permanent officers. A Complaint and Notice of Hearing issued on the unfair practice charge.

On December 22, 1992, the City moved for consolidation and a predominant interest determination. Administrative Law Judge Joseph E. Kane, ALJ found that the matters should be consolidated and that the Department of Personnel has the predominant interest with the exception of the issue concerning the hiring of special police. That issue would remain with the Commission and be decided after the Department of Personnel rendered a final decision.

The FOP urges that Judge Kane's recommendation that the Department of Personnel have the predominant interest be rejected. It claims that since the dominant issue in this dispute is the anti-union motivation of the City towards the FOP, the predominant interest in this matter lies with the Commission. The City responds that the ALJ's recommendation should be adopted.

Having considered the record and the Administrative Law Judge's order, and having made an independent evaluation of the record, the Merit System Board at its meeting on *May 25*, 1993 and the Public Employment Relations Commission at its meeting on May 20, 1993 made the following determination in this matter.

ORDER

The Merit System Board and the Public Employment Relations Commission have agreed to the following procedures, and it is

ORDERED that the above matters be consolidated for hearing before a Hearing Examiner of the Commission designated a special administrative law judge as provided by N.J.S.A. 52:14F-6(b); and it is

FURTHER ORDERED that the Commission will issue the final decision on whether the City repudiated the collective negotiations agreement or was illegally motivated by anti-union animus when it hired special police while failing to retain members of the FOP's negotiations unit as permanent officers; and it is

FURTHER ORDERED that the Commission will make the initial decision whether protected activity was a substantial or motivating factor in the City's decision to terminate Eubia Bethea, Gary O'Shea, Christopher Romeo and Paul Zielinski; and it is

FURTHER ORDERED that if the Commission finds that protected activity was a substantial or motivating factor, the Merit System Board will then determine whether the same action would have taken place even in the absence of the protected activity, and if the employer's actions were in good faith under Department of Personnel law; and it is

FURTHER ORDERED that in the event it is found that the terminations would not have taken place even in the absence of the protected activity, the matter will then be returned to the Commission for its consideration of specialized remedial relief under its Act; and it is

FURTHER ORDERED that if the Commission finds that protected activity was not a substantial or motivating factor in the City's decision to terminate Eubia Bethea, Gary O'Shea, Christopher Romeo and Paul Zielinski, the Merit System Board will then determine whether the terminations were in good faith under Department of Personnel law.

DECISION RENDERED BY THE  
MERIT SYSTEM BOARD ON

*May 25, 1993*

*Anthony J. Cimino*  
\_\_\_\_\_  
Anthony Cimino  
Commissioner

DATED: Trenton, New Jersey

*May 25, 1993*

DECISION RENDERED BY  
THE PUBLIC EMPLOYMENT RELATIONS  
COMMISSION ON MAY 20, 1993

*James W. Mastriani*  
\_\_\_\_\_  
James W. Mastriani  
Chairman

DATED: Trenton, New Jersey

May 20, 1993

Chairman Mastriani, Commissioners Goetting, Grandrimo, Bertolino, Regan and Smith voted in favor of this decision. None opposed. Commissioner Wenzler abstained from consideration.