

P.E.R.C. NO. 2008-20

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF UNION,

Respondent,

-and-

Docket No. CO-2006-025

PBA LOCAL 69,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Township of Union violated the New Jersey Employer-Employee Relations Act when it refused to supply a list of jobs-in-blue program vendors to PBA Local 69 and when it conducted surveillance of off-duty PBA members. The PBA had filed amended unfair practice charges alleging that the Township violated the Act by refusing to supply the list of vendors and by conducting surveillance of off-duty PBA members in retaliation for their advocacy in favor of continuing the jobs-in-blue program and their criticism of Township officials. The Commission holds that an employer must supply information if there is a probability that the information is potentially relevant and that it will be of use to the representative in carrying out its statutory duties. The Commission concludes that the issue in this case centers on a program required by the existing contract and directly affecting the officers' income levels and the PBA's legitimate representational interests in seeking to have the program continued. The Commission also finds that the employer's surveillance interfered with protected rights and that there was no legitimate business justification for the surveillance. The Commission orders the Township to cease and desist from refusing to supply the names and contact information of the jobs-in-blue vendors and to cease and desist from conducting unjustified surveillance of PBA members.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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TOWNSHIP OF UNION,

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Docket No. CO-2006-025

PBA LOCAL 69,

Charging Party.

Appearances:

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

For the Charging Party, Zazzali, Fagella, Nowak,  
Kleinbaum and Friedman, attorneys (Paul Kleinbaum, of  
counsel)

DECISION

The Township of Union has filed exceptions to a Hearing Examiner's decision finding that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it refused to supply the list of jobs-in-blue program vendors to PBA Local 69. Jobs-in-blue permits off-duty police officers to work at private security jobs from a list maintained by the police department. The Hearing Examiner also found that the Township conducted surveillance of off-duty PBA members in retaliation for their advocacy in favor of continuing the program and their criticism of Township officials. After an independent review of the record, we find that the Township had an obligation

to provide the list of vendors, and that its surveillance of off-duty PBA members tended to interfere with the exercise of the police officers' rights under the Act.<sup>1/</sup>

The PBA's unfair practice charge and amended charge were filed on July 22, 2005 and January 11, 2006. A Complaint and Notice of Hearing issued on May 2, 2006.<sup>2/</sup> On September 25, 2006, Hearing Examiner Elizabeth J. McGoldrick conducted a hearing. On June 29, 2007, she issued her report and recommendations.

We have reviewed the record. We adopt and incorporate the Hearing Examiner's findings of fact (H.E. at 3-12).

We begin with the Township's obligation to provide the PBA with the list of jobs-in-blue vendors. N.J.S.A. 34:13A-5.4(a)(5) prohibits public employers from "refusing to negotiate in good faith with a majority representative concerning terms and conditions of employment." An employer's refusal to provide a majority representative with information that the union needs to represent its members constitutes a refusal to negotiate in good

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1/ We deny the Township's request for oral argument. The issues have been fully briefed and well presented.

2/ On August 25, 2005, the PBA's application for interim relief was denied. I.R. No. 2006-6, 31 NJPER 259 (¶102 2005). On April 20, 2006, the Director of Unfair Practices administratively dismissed an allegation contesting the Township's unilateral termination of the jobs-in-blue program, finding that the decision was not subject to mandatory negotiations.

faith. UMDNJ, P.E.R.C. No. 93-114, 19 NJPER 342 (¶24155 1993), recon. granted P.E.R.C. No. 94-60, 20 NJPER 45 (¶25014 1994), aff'd 21 NJPER 319 (¶26203 App. Div. 1995), aff'd 144 N.J. 511 (1996). An employer must supply information if there is a probability that the information is potentially relevant and that it will be of use to the representative in carrying out its statutory duties. State of N.J. (OER), P.E.R.C. No. 88-27, 13 NJPER 752 (¶18284 1987), recon. den. P.E.R.C. No. 88-45, 13 NJPER 841 (¶18323 1987), aff'd NJPER Supp.2d 198 (¶177 App. Div. 1988).

The Township argues that the request for a list of vendors was completely unrelated to collective negotiations. We disagree. The jobs-in-blue program provided officers with substantial opportunities to earn extra compensation. The parties' contract contained a provision requiring continuation of that program during the term of the agreement and the PBA was opposing elimination of the program at Township Committee meetings. The list of vendors was therefore of use to the PBA in representing its officers and seeking to maintain their income-earning opportunities. Contrary to the Township's assertion, there need not have been any separate legal authority requiring the employer to provide the information. Nor is it dispositive, given the representational issues we find, that a Commission designee subsequently issued an interim relief decision concluding that it appeared the Township had a managerial right

to discontinue the program. We reject the Township's suggestion that "taken to its logical extreme," our holding would require the Township to provide the PBA with the name and address of every taxpayer. That issue is not before us and implicates privacy concerns not present in this case. The issue present in this case centers on a program required by the existing contract and directly affecting the officers' income levels and the PBA's legitimate representational interests in seeking to have the program continued.

That the PBA already had a partial list of vendors is irrelevant to our finding that the Township had an obligation to provide a complete list. Nor is the PBA president's testimony at hearing about what the PBA intended to say in a letter to vendors relevant to the Township's obligation to provide the list. If a majority representative later makes false accusations about a public employer, the employer may respond appropriately. It may not, however, use that later action as an excuse for not timely providing the required information. Under all these circumstances, we find that the Township had an obligation to provide the requested information.

We next address the Township's surveillance of off-duty PBA members. An employer action that tends to interfere with a public employee's statutory rights without a legitimate and substantial business justification violates 5.4a(1). See, e.g.,

New Jersey College of Medicine and Dentistry, P.E.R.C. No. 79-11, 4 NJPER 421 (¶4189 1978); New Jersey Sports and Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979); Mt. Olive Tp. Bd. of Ed., P.E.R.C. No. 90-66, 16 NJPER 128 (¶21050 1990) (placing employees under surveillance to build up information to justify illegal transfer violates 5.4a(1)). The National Labor Relations Board has also held that an employer's unjustified surveillance of employees violates the private sector labor relations act. Higgins, The Developing Labor Law at 178-185 (5th ed. 2006).

After the PBA's president aggressively opposed the elimination of the jobs-in-blue program at the August 12, 2005 Township Committee meeting, the Township Administrator directed the Acting Police Chief to ensure that there would be no improper police conduct after the meeting at the local bar where police gather. The Chief called in two off-duty Internal Affairs officers and told one of them that the PBA had angered the Committee and that "the war is on."<sup>3/</sup> The Internal Affairs officers were ordered to watch the PBA members at the bar.

The Township argues that the Chief had the authority to determine how police personnel would be deployed. In the abstract, that statement is correct. But the Chief did not have the right to conduct surveillance of PBA members or leaders in

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<sup>3/</sup> The Chief did not deny stating that "the war is on." He testified that he did not recall making that statement.

response to their outspoken opposition to the elimination of the jobs-in-blue program. The PBA members had not previously been the subject of surveillance for law enforcement purposes and the testimony shows that the surveillance was in direct response to the PBA activity protected by our Act. We need not find that either the Township Administrator or the Chief was hostile to the PBA activity to find a violation of 5.4a(1). We need only find that the surveillance tended to interfere with protected rights and that the Township did not have a legitimate business justification for the surveillance.<sup>4/</sup> On this record, we so find. The purported reason for the surveillance was that two incidents had occurred after the July 12, 2005 Township Committee meeting. However, one incident was found to be an accident and the other involved parking motorcycles on the sidewalk. Neither was considered serious at the time or triggered surveillance until after PBA members spoke out at the August 23 Committee meeting.

Finally, the Township argues that its surveillance of the PBA did not violate 5.4a(3) because it took no adverse action against PBA members. Unlawful surveillance ordinarily violates

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<sup>4/</sup> See Middletown Tp. Bd. of Ed., P.E.R.C. No. 96-45, 22 NJPER 31 (¶27016 1995), aff'd 23 NJPER 53 (¶28036 App. Div. 1996), certif. den. and notice of app. disp., 149 N.J. 35 (1997) (speaking at public meeting is protected activity); cf. West Windsor Tp. v. PERC, 78 N.J. 98 (1978) (public employees have right to make known their grievances to public bodies).

5.4a(1). We have found a 5.4a(1) violation and will issue the same cease and desist order that would be issued after finding a 5.4a(3) violation. Under these circumstances, we need not reach the question of whether the Township's conduct also violated 5.4a(3). City of Somers Point, P.E.R.C. NO. 2003-40, 28 NJPER 586 (¶33182 2002).

ORDER

The Township of Union is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of rights guaranteed to the by the Act, particularly by conducting surveillance of PBA members who attended a meeting on August 23, 2005 to advocate for the retention of the jobs-in-blue program.

2. Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment, particularly by refusing to give PBA Local 69 the names and contact information of the jobs-in-blue vendors.

B. Take this action:

1. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately



and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

2. Within twenty (20) days of receipt of this decision, notify the Chairman of the Commission of the steps the Respondent has taken to comply with this order.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo and Fuller voted in favor of this decision. None opposed. Commissioner Watkins recused himself.

ISSUED: October 25, 2007

Trenton, New Jersey

**NOTICE TO EMPLOYEES**  
**PURSUANT TO**  
**AN ORDER OF THE**  
**PUBLIC EMPLOYMENT RELATIONS COMMISSION**  
**AND IN ORDER TO EFFECTUATE THE POLICIES OF THE**  
**NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,**  
**AS AMENDED,**

**We hereby notify our employees that:**

WE WILL cease and desist from interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly by conducting surveillance of PBA Local 69 members who attended a meeting on August 23, 2005 to advocate for the retention of the jobs-in-blue program.

WE WILL cease and desist from refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment, particularly by refusing to give PBA Local 69 the names and contact information of the jobs-in-blue vendors.

CO-2006-025

Docket No.

TOWNSHIP OF UNION

(Public Employer)

Date: \_\_\_\_\_

By: \_\_\_\_\_

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, P.O. Box 429, Trenton, NJ 08625-0429 (609) 984-7372