

P.E.R.C. NO. 86-121

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ATLANTIC CITY,

Respondent,

-and-

Docket No. CO-86-112

ATLANTIC CITY POLICEMEN'S
BENEVOLENT ASSOCIATION, LOCAL
NO. 24,

Charging Party.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, pursuant to authority delegated by the full Commission and in the absence of exceptions, grants a motion for summary judgment dismissing a Complaint based on an unfair practice charge filed by Atlantic City Policemen's Benevolent Association, Local 24, against the City of Atlantic City. The charge alleged the City violated the New Jersey Employer-Employee Relations Act when it refused to supply winter coats to members of PBA's negotiations unit. The Chairman, in agreement with a Commission Hearing Examiner, concludes that the Complaint involved a contractual dispute which did not rise to the level of an unfair practice.

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Appearances:

For the Respondent, Aron, Salsberg & Rosen, Esqs. (Louis C. Rosen, Of Counsel)

For the Charging Party, Howard J. Casper, Esq.

DECISION AND ORDER

On November 8, 1985, the Atlantic City PBA Local 24 ("PBA") filed an unfair practice charge against the City of Atlantic City ("City"). The charge alleges that the City violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (3) and (5),^{1/} when it refused

^{1/} These subsections 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; (3) 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; and (5) Refusing to negotiate in good faith with a majority

to supply members of PBA's negotiations unit with winter coats. This refusal allegedly violated the parties' collective negotiations agreement.

On November 22, 1985, a Complaint and Notice of Hearing issued. On December 6, 1986, the City filed its Answer. It admits that it did not supply winter coats, but contends that the parties agreed, in their contract, to an alternate method to receive coats: the employee would purchase the coat and be reimbursed by the City.

On January 6, 1986, the City filed a Motion for Summary Judgment. It contends that it is entitled to judgment as a matter of law because the dispute merely involves the interpretation of a collective negotiations agreement and is therefore subject to dismissal under State of New Jersey (Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). The PBA did not respond to this motion.

On February 6, 1986, Hearing Examiner Edmund G. Gerber granted the City's motion and dismissed the Complaint. H.E. No. 86-36, 12 NJPER ____ (¶____ 1986). He found that the complaint involved a contractual dispute which did not rise to the level of an unfair practice. He advised the parties that exceptions to his decision were due February 20, 1986.

1/ Footnote Continued From Previous Page

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."

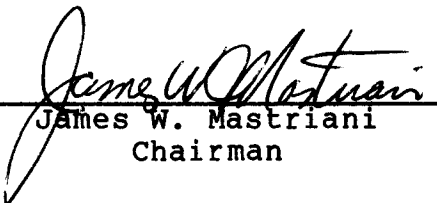
On February 18, 1986, the PBA requested a 30 day extension to file exceptions. On February 21, 1986, this extension was granted. No exceptions have been filed, however, by either party.

I have reviewed the record. In the absence of exceptions and under all the circumstances of this case, I agree that the City is entitled to summary judgment dismissing the Complaint.

Acting pursuant to authority delegated to me by the full Commission, I dismiss the Complaint.

ORDER

The Complaint is dismissed.


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
April 29, 1986

H.E. NO. 86-36

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ATLANTIC CITY,

Respondent,

-and-

DOCKET NO. C0-86-112

ATLANTIC CITY POLICEMEN'S BENEVOLENT
ASSOCIATION, LOCAL No. 24,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends to the Public Employment Relations Commission that it grant a Motion for Summary Judgment brought by the City of Atlantic City. The Atlantic City PBA, Local No. 24 brought an unfair practice charge alleging that the City refused to negotiate in good faith when it failed to provide winter jackets for its members as called for in the collective bargaining contract. The City pointed out that the contract provided two alternate dispute mechanisms. First, the contract provides that if winter jackets are not provided, the officers may purchase their own and the City must reimburse them the cost within 30 days. In addition, the contract provides for binding arbitration. The PBA did not support its bare allegation that the City repudiated the contract. Therefore, pursuant to Human Services, PERC No. 84-148, 10 NJPER 419 (¶15191 1984) the City did not commit an unfair practice.

H.E. NO. 86-36

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ATLANTIC CITY POLICEMEN'S BENEVOLENT
ASSOCIATION, LOCAL No. 24

Charging Party.

Appearances:

For the Respondent, Aron, Salsberg & Rosen, Esq.
(Louis C. Rosen of counsel)

For the Charging Party, Howard J. Casper, Esq.

RECOMMENDED DECISION ON
MOTION FOR SUMMARY JUDGMENT

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") by the Atlantic City Policemen's Benevolent Association, Local No. 24 ("Charging Party" or "PBA") on November 8, 1985 alleging that the City of Atlantic City ("Respondent" or "City") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), in that the City refused to supply winter jackets for members of the bargaining unit even though it was required to do so under the contract. It was further

alleged that this action was taken to avoid buying jackets for the coming winter. Specifically, if the PBA grieved this matter, rather than file the instant charge, it would take six months to get an arbitrator's decision. It is alleged that this action violated N.J.S.A. 34:13A-5.4(a)(1), (3), and (5) ^{1/} of the Act. The charge is accompanied by an application for injunctive relief. After a show cause hearing, the application for injunctive relief was denied.

It appearing that the allegations of the unfair practice charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on November 22, 1985.

On December 6, 1985, the City filed an Answer in which it denies it committed an unfair practice and states three alternative defenses. First, it alleges that the Charging Party failed to state a claim upon which relief may be granted; second, it alleges that the parties to the action have mutually negotiated into the contract an alternative method for PBA members to obtain winter jackets ; and

^{1/} These subsections 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; (3) 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; (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."

third, it argues that this is an issue of contract interpretation and, therefore, the matter should be referred to the Commission's binding arbitration procedure.

This matter was scheduled for hearing on January 22, 1986. On January 6, 1986, the Respondent filed the instant Notice of Motion. The scheduled hearing was cancelled and on January 27, 1986, Chairman James W. Mastriani referred this matter to me for disposition.

The City never did dispute that it was obligated under the contract to provide winter jackets by October 15, 1985. It argues however, that there is an express provision in the contract that states that if no replacement has been provided by October 15, "then in that event, the officer shall be permitted to purchase such item and be reimbursed by the City within thirty (30) days from the date that he submits his paid receipts." It argues that the contract itself provides for an alternative method of obtaining winter jackets at the City expense. This method was obtained through the negotiations process. It argues that the City's failure to provide the jackets does not constitute a repudiation of the contract and, therefore, is not an unfair practice.

In the alternative it argues, that this matter should be deferred to arbitration. The PBA did not respond to the City's motion.

ANALYSIS

It is well settled under the law of this State that, in the granting or denying of a motion for summary judgment, all inferences of doubt are drawn against the moving party and in favor of the party opposing the motion. Additionally, in considering the instant Motion for Summary Judgment, no credibility determinations may be made. The motion must be denied if material factual issues do exist.

However, the New Jersey Supreme Court established in Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J. 67, 75 (1974). See also, Communications Workers of America, AFL-CIO, Local 1037 and Allan Schuster, H.E. No. 86-10, 11 NJPER 621 (¶16217 1985), aff'd P.E.R.C. No. 86-78, 12 NJPER ____ (¶____ 1985), that where the party opposing the motion does not submit any affidavits or documentation contradicting the moving party's affidavits and documents, the moving party's facts may be considered as true, and there would necessarily be no material factual issue to adjudicate unless, per chance, it was raised in the movant's pleadings. The Court in Judson held that:

...if the opposing party offers no affidavits or matter in opposition, or only facts which are immaterial or of an insubstantial nature...he will not be heard to complain if the court grants summary judgment, taking as true the statement of uncontradicted facts and the papers relied upon by the moving party, such papers themselves not otherwise showing the existence of an issue of material fact. (17 N.J. at 75).

The Charging Party makes the bare allegation that the City's failure to provide the jackets was motivated by a

desire to draw this matter out for the six months period it would take to adjudicate this claim through arbitration. However, it offers no support of this contention by way of factual allegations in the charge and, further, filed no affidavits in opposition to the instant motion. Accordingly, the Charging Party here failed to provide any support for its contention that the City attempted to willfully avoid complying with the provisions of the contract. This contention will not be considered in resolving the instant motion.


In In re State of New Jersey v. Dept. of Human Services, P.E.R.C. No. 84-18, 10 NJPER 419 (¶15181 1984) the Commission considered under what circumstances a breach of contract may rise to the level of an unfair practice. It held that a violation of the contract does not automatically constitute an unfair practice. There must be a showing that there was a repudiation of the terms of the contract. An employer will not be found to have refused to negotiate in good faith simply because its interpretation of a contract clause may be ultimately be proved to be mistaken, so long as the collective negotiations agreements provides specific grievance procedures for the resolution of contract disputes and the employer is willing to abide by those procedures.

In the instant case, the contract contemplated that the City may fail to provide winter jackets and provides its own remedy for this contingency. If the Commission were to

intrude in this dispute now it would short circuit this dispute resolution mechanism.

As noted above, the PBA's bare assertions of repudiation absent any support cannot by itself force this matter into hearing.

Accordingly, it is hereby recommended that the Commission grant the City of Atlantic City's Motion for Summary Judgment and dismiss the instant complaint in its entirety.^{2/}


Edmund G. Gerber
Hearing Examiner

DATED: February 6, 1986
Trenton, New Jersey

^{2/} In the alternative if the Commission declines to grant the instant motion, I cannot recommend that this matter be deferred to arbitration unless the City agrees to waive arbitration so that the underlying factual allegation of this charge may be adjudicated (See Human Services, supra).