

P.E.R.C. NO. 81-111

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ATLANTIC COUNTY SEWERAGE
AUTHORITY,

Respondent,

-and-

Docket No. CO-80-18-52

INTERNATIONAL BROTHERHOOD OF
FIREMEN AND OILERS, LOCAL #473,

Charging Party.

SYNOPSIS

The Commission denies a motion for reconsideration and a request for oral argument. In its initial decision, the Commission did not consider the original request of the Authority for oral argument. However, in denying the motion for reconsideration, the Commission noted their prior thorough review of the record included argument presented to the Hearing Examiner and the brief of the Authority in which it argued in support of its exceptions. No other grounds for reconsideration were presented by the Authority.

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FIREMEN AND OILERS, LOCAL #473,

Charging Party.

Appearances:

For the Respondent, Horn, Kaplan, Goldberg
and Gorny, Esqs.

(Thomas C. Bonner, of Counsel)

For the Charging Party, Freedman & Lorry, Esqs.

(Mark P. Muller, of Counsel)

DECISION ON MOTION FOR RECONSIDERATION

On January 20, 1981 this Commission decided the above-entitled case, P.E.R.C. No. 81-91, 7 NJPER ____ (¶ _____ 1981), finding that the Atlantic County Sewerage Authority (the "Authority") had violated N.J.S.A. 34:13A-5.4(a)(1) and (a)(5) when, without adequate justification, it withdrew the recognition it had extended to Local 473 of the International Brotherhood of Firemen and Oilers ("Local 473") only six weeks earlier. Additionally, the Commission found that certain unilateral actions taken by the Authority with respect to terms and conditions of employment subsequent to the withdrawal of recognition also constituted unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a)(1) and (a)(5).

In reaching its decision the Commission reviewed the entire record including the exceptions filed by the Authority to the Hearing Examiner's Recommended Report and Decision. The Commission's decision summarizes the facts of the case and discusses in some detail each of the exceptions filed by the Authority.

Unfortunately, in its review of the record, the Commission failed to notice that the Authority had included a request for oral argument as part of its brief in support of its exceptions.^{1/} Therefore, the Commission did not grant or deny the request nor make reference to it in its decision.

Upon receipt of the decision, the Authority's attorney contacted the Commission to inquire why no action had been taken on the request for oral argument. It was at this time that the Commission's oversight was discovered. The Authority then filed the instant motion for reconsideration based upon the Commission's failure to consider the original request and again seeking the opportunity to argue before the Commission. No other grounds for reconsideration are presented. Local 473 has responded by opposing both the motion and the request for oral argument.

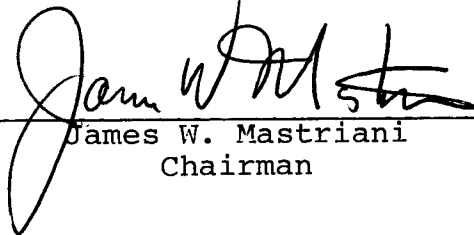
As indicated, the Commission had thoroughly reviewed the record in this case developed before the Hearing Examiner.

^{1/} N.J.A.C. 19:14-8.2 provides that any party seeking oral argument before the Commission in an unfair practice case, in addition to that contained in the transcript of the hearing before the Hearing Examiner, must request such argument in writing simultaneously with the submission of its position on exceptions.

This included the transcript of the hearing during which both sides were provided the opportunity to argue their positions. The Authority was granted an extension of time to file exceptions in this case, and it did submit them along with a brief in which it argued in support of its exceptions. The Commission thoroughly reviewed the record and its initial decision was by unanimous vote. Oral argument is not required in these cases. N.J.A.C. 19:14-8.2. It is discretionary even when requested, particularly, in cases where, as here, there has already been ample argument provided. Cf. Long Branch Education Ass'n v. Board of Ed of Long Branch, 150 N.J. Super. 262, 264 (App. Div. 1976).

While the Commission sincerely regrets its failure to consider the Authority's original request, it does not appear that reopening this case to permit oral argument at this point in time would be appropriate or worthwhile. The motion for reconsideration and the request for oral argument are both denied. We apologize to the Authority for any inconvenience caused by our earlier oversight.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hipp, Hartnett, Parcels, Graves and Newbaker voted for this decision. None opposed.

DATED: Trenton, New Jersey
March 10, 1981
ISSUED: March 11, 1981

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

In the Matter of

ATLANTIC COUNTY SEWERAGE AUTHORITY,

Respondent,

-and-

Docket No. CO-80-18-52

INTERNATIONAL BROTHERHOOD OF FIREMEN
AND OILERS, LOCAL 473,

Charging Party.

SYNOPSIS

A Hearing Examiner denies a Motion for Summary Judgment. The Respondent raised factual issues which must be resolved at a hearing before a decision can be made in this matter.

A Hearing Examiner's denial of a motion to dismiss may not be appealed directly to the Commission except by special permission of the Commission pursuant to N.J.A.C. 19:14-4.6.

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Docket No. CO-80-18-52

INTERNATIONAL BROTHERHOOD OF FIREMEN
AND OILERS, LOCAL 473,

Charging Party.

Appearances:

For the Respondent
John P. Miraglia, Labor Consultant

For the Charging Party
Freedman and Lorry, Esqs.
(Mark P. Muller, Esq.)

DECISION ON MOTION FOR SUMMARY JUDGMENT

On July 17, 1979, the International Brotherhood of Firemen and Oilers, Local 473, AFL-CIO (Local 473) filed a charge with the Public Employment Relations Commission (PERC) alleging that on or about April 16, 1979 and April 30, 1979, the Atlantic County Sewerage Authority (Authority) recognized the Charging Party as the exclusive bargaining agent for all mechanical, electrical, operational, labor and custodial employees of the Authority. The granting of recognition was based upon Charging Party presenting to the Authority signed authorization cards designating Local 473 as the exclusive negotiations agent by a majority of the unit employees.

It was further alleged that on or about June 11, 1979, the Authority notified the Charging Party that it was withdrawing its recognition. On June 19 the Charging Party demanded that the Authority negotiate with it as the exclusive collective negotiations agent for the unit in question. The Authority refused to negotiate and, it was alleged, on July 1, 1979, the Authority unilaterally instituted a wage increase of 10% to all unit employees. It was specifically alleged that the Authority violated N.J.S.A. 34:13A-5.4(a)(1), (5) and (7) of the Act. ^{1/}

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; (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit con-

(continued)

It appearing that the allegations of the charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on February 1, 1980. On March 31, 1980, the Charging Party filed a Motion for Summary Judgment, reiterating the facts in the complaint. The Respondent opposed the motion by letter on April 7, 1980, and filed an answer to the complaint, a brief in opposition to the Motion for Summary Judgment and a request to permit the filing of these documents out of time.^{2/}

N.J.A.C. 19:14-4.8(c) provides that a responding party shall have ten days to file any answering brief and affidavits.

Since the Respondent did file the letter opposing the motion in a timely fashion and did participate in precomplaint conferences regarding this matter, the undersigned will grant the Respondent's request and permit the filing of its answer to the complaint and its brief in opposition to the motion.

The Respondent in its answer admits that recognitions granted to Local 473 on April 16 and April 30 were granted, but alleges that the authorization cards examined were issued six to eight months prior to the date of recognition. It is further alleged that many of the cards presented had been withdrawn but the Respondent did not know that they were withdrawn. Had the Respondent known that they were withdrawn the Respondent would never have granted recognition. It was further alleged that the Charging Party knew that some of the union authorization cards had been withdrawn. Said withdrawn authorization cards brought the number of remaining authorization cards below that required to obtain a majority.

The Respondent admitted that when it learned that authorization cards had been withdrawn it withdrew its recognition. Finally it admitted that it granted

^{1/} (continued) cerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative; (7) Violating any of the rules and regulations established by the commission.

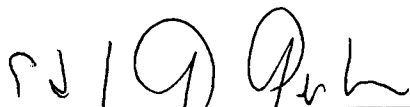
^{2/} The Charging Party noted in its motion that the Respondent failed to file an answer within the time limit specified in N.J.A.C. 19:14-3.1 and argued that the allegations of the charge, as incorporated in the complaint, be deemed to be admitted. In the Respondent's letter of April 7, 1980, it alleged that it answered the complaint by letter dated August 2, 1979. However, that letter was in response to the original charge and was simply a general denial of the allegations of the charge and stated that once they were apprised of the alleged facts it would respond in detail. No such letter was ever filed.

a pay raise on July 1, 1979. It alleged that this was a routine pay raise, not related in any way to negotiations or transactions involving the parties to this proceeding. ^{3/}

In Grand Union Co., 122 NLRB No. 68, 43 LRRM 1165, the employer committed an unfair labor practice when it granted recognition to a union after a card check when in fact some of the cards submitted were from an earlier union campaign from the year before. The signers of these cards testified that they did not wish the union to represent them when the union relied on these same cards to get recognition. See also, The Garment Workers Union v. NLRB, 280 P.2d 260 (CADC 1960), 46 LRRM 2223.

It follows that the Sewerage Authority here has raised a substantial issue of fact, i.e. the Union did not represent a majority of employees when the demand for recognition was granted. (See N.J.A.C. 19:10-1.1 §25 which provides that authorization cards are "normally" valid only if they were filed within six months of their presentation.)

Accordingly this matter will be set down for hearing on June 12, 1980, and each day consecutively thereafter until completion of hearing at 10 a.m. at the P.E.R.C. Office, 429 East State Street, Trenton, New Jersey.



Edmund G. Gerber
Hearing Examiner

DATED: May 8, 1980
Trenton, New Jersey

^{3/} It is noted that in their motion, the Charging Party only seeks to be recognized as the exclusive employee representative and makes no demand for a remedy involving the raise of July 1. Accordingly, the unilateral raise will not be considered as a separate issue.