

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH HUDSON REGIONAL FIRE & RESCUE,

Respondent,

-and-

Docket No. CO-H-2000-254

NORTH HUDSON FIRE OFFICERS ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint against the North Hudson Regional Fire & Rescue. The Complaint was based on an unfair practice charge filed by the North Hudson Fire Officers Association alleging that the Regional violated the New Jersey Employer-Employee Relations Act by unilaterally modifying employee compensation during interest arbitration proceedings, thereby interfering with the administration of a new negotiations unit and chilling the rights of the Association. The Commission holds that this case is moot since it involved a dispute over the salary to be paid former Weehawken employees, who were promoted to a newly-created lieutenant position, pending the issuance of an interest arbitration award setting those salaries. That award has issued and has been affirmed by this Commission.

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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Appearances:

For the Respondent, Scarinci & Hollenbeck, LLC
(Mark S. Tabenkin, of counsel)

For the Charging Party, Loccke & Correia, P.A.
(Michael A. Bukosky, on the exceptions)

DECISION

On February 28, 2000, the North Hudson Fire Officers Association filed an unfair practice charge against the North Hudson Regional Fire & Rescue. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1), (2), (3), (5) and (7),^{1/} by unilaterally modifying employee compensation during

^{1/} These provisions 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; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (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) (continued...)

interest arbitration proceedings, thereby interfering with the administration of a new negotiations unit and chilling the rights of the Association.

On March 28, 2001, a Complaint and Notice of Hearing issued. On April 26, the Regional filed an Answer denying that it violated the Act and asserting several affirmative defenses, including that the Association failed to negotiate with it over terms and conditions of employment and that the Regional is not the proper respondent.^{2/}

On March 14, 2002, the Hearing Examiner conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument, but filed post-hearing briefs. The City of Weehawken did not file a brief. The record closed on December 2, 2002.

1/ (...continued)
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; (7) Violating any of the rules and regulations established by the commission."

2/ The City of Weehawken moved to intervene. The City is one of the five municipalities that forms the Regional. It had created by ordinance the disputed lieutenant title and unilaterally set its compensation rate. Hearing Examiner Arnold H. Zudick denied the City's motion to intervene, but permitted it to file a post-hearing brief on the legal issues. We denied special permission to appeal that determination. P.E.R.C. No. 2002-46, 28 NJPER 149 (¶33050 2002).

On January 14, 2003, the Hearing Examiner recommended dismissing the Complaint. H.E. No. 2003-12, 29 NJPER 72 (¶20 2003). He found that Weehawken had a managerial prerogative to create a lieutenant title, to promote six employees into that title, and to set an initial salary for the new title. He further found that the Association did not request negotiations over compensation for the new title and that therefore neither the City nor the Regional violated the Act.

On February 28, 2003, the Association filed exceptions. On April 21, the Regional filed an answering brief. The Association conceded that the employer had a prerogative to establish the position of Lieutenant/Fire Officer 1 from the pool of Weehawken employees, but argued that employees in this position should be paid the rate other identically-situated employees were paid to perform identical duties, i.e., the rate paid to Weehawken fire captains. It argued that we should compel the employer to pay former Weehawken lieutenants the captains' rate of \$71,400 pending execution of a new contract. The Association noted that if the interest arbitrator ultimately awarded Weehawken lieutenants less than that rate, they would be obligated to pay those sums back.

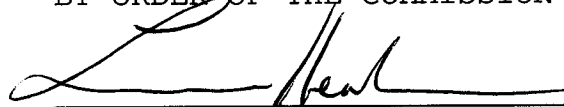
We hold that this case is moot. It involved a dispute over the salary to be paid former Weehawken employees who were promoted to a newly-created lieutenant position, pending the

issuance of an interest arbitration award setting those salaries. The arbitration award has issued and has been affirmed by this Commission. The contract term runs from July 1, 1999 through June 30, 2004 and sets salaries for these former Weehawken employees for each year of the agreement. Given the Association's demand that the employer pay these employees the captains' rate only until the execution of the new agreement, and given the new contract setting salaries for the former Weehawken employees, there is no longer any disagreement over how much these employees should have been and should be compensated. This dispute was unique to the circumstances of the regionalization and is very unlikely to reoccur. Under these circumstances, we find no reason to prolong a past dispute and dismiss the Complaint as moot.

ORDER

The Complaint is dismissed as moot.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read "L Henderson", is written over a horizontal line.

Lawrence Henderson
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo and Sandman voted in favor of this decision. None opposed. Commissioner Mastriani abstained from consideration. Commissioner Katz was not present.

DATED: January 29, 2004
Trenton, New Jersey
ISSUED: January 29, 2004

H.E. NO. 2003-12

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SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends the Commission find that neither the North Hudson Regional Fire & Rescue, nor the City of Weehawken, violated the New Jersey Employer-Employee Relations Act, or the Consolidated Municipal Service Act by promoting and paying certain employees as lieutenants. The Hearing Examiner, nevertheless, explained that the affected employees must be paid in accordance with an interest arbitration award as finalized by the Commission.

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. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.