

P.E.R.C. NO. 2005-55

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF PISCATAWAY,

Respondent-Charging Party,

-and-

Docket Nos. CO-2003-206
CO-2003-329
CE-2004-001

PISCATAWAY PBA LOCAL NO. 93,

Charging Party-Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of Piscataway PBA Local No. 93 for partial summary judgment on one of the charges in a consolidated unfair practice Complaint (CO-2003-329). That charge alleges that the Township of Piscataway refused to negotiate in good faith in violation of the New Jersey Employer-Employee Relations Act when it unilaterally implemented certain promotional procedures. The Commission orders the employer to rescind and negotiate over the two disputed aspects of the promotional policy. The Commission rejects the PBA's request that all promotions made pursuant to the unilaterally adopted policy be rescinded. Nothing in the parties' submissions suggests that the results of the promotional process would have been any different had the PBA's positions on these two issues been adopted by the Township and incorporated in the policy. The Commission severs CO-2003-329 from the consolidated Complaint and this decision constitutes a final administrative decision.

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.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF PISCATAWAY,

Respondent-Charging Party,

-and-

Docket Nos. CO-2003-206
CO-2003-329
CE-2004-001

PISCATAWAY PBA LOCAL NO. 93,

Charging Party-Respondent.

Appearances:

For the Respondent-Charging Party, DeCotiis,
Fitzpatrick, Cole & Wisler, LLP, attorneys (Stacey D.
Adams and Alice M. Penna, on the brief)

For the Charging Party-Respondent, Marc D. Abramson,
Consultant

DECISION

On December 22, 2004, Piscataway PBA Local No. 93 moved for partial summary judgment on one of the charges in a consolidated unfair practice Complaint (CO-2003-329). That charge alleges that the Township of Piscataway refused to negotiate in good faith in violation of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(5) and, derivatively, a(1),^{1/} when it unilaterally implemented certain

^{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. (5) Refusing to
(continued...)

promotional procedures. On January 31, 2005, the Township filed a brief with a supporting certification opposing summary judgment. On February 15, 2005, the Chairman referred the motion to us for disposition. N.J.A.C. 19:14-4.8(a).

On June 3, 2003, the Township issued a new promotional policy that reflected the parties' agreement on certain issues, but also included two issues over which the parties did not agree and that the Township had maintained were non-negotiable managerial prerogatives. Those issues involved the order of the various components of the promotional process and when the results of the written examination would be disclosed. The PBA then filed the instant unfair practice charge (CO-2003-239) alleging that the unilateral implementation of the new policy violated the Township's duty to negotiate in good faith.

On August 27, 2003, the Township filed a scope of negotiations petition arguing that certain issues, including the two disputed issues, were not mandatorily negotiable. On December 3, the Township made four promotions pursuant to the June 3, 2003 promotional policy. On April 30, 2004, we held that the two issues were mandatorily negotiable. P.E.R.C. No. 2004-

1/ (...continued)
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."

72, 30 NJPER 143 (¶57 2004). On December 30, the Appellate Division affirmed that determination. ___ NJPER ___ (¶__ App. Div. 2004).

Summary judgment will be granted if there are no material facts in dispute and the movant is entitled to relief as a matter of law. N.J.A.C. 19:14-4.8(d); Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995); Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 73-75 (1954).

The PBA argues partial summary judgment is warranted because the Township unilaterally implemented rules and regulations concerning the promotional process and refused to negotiate over the two disputed issues. It seeks rescission of the promotional policy and the promotions made pursuant to that policy, and an order to negotiate.

The Township responds that its position opposing the negotiability of the two proposals was reasonable and made in good faith. The Township contends that the fact that this Commission and the Appellate Division disagreed with its legal arguments does not mean that it acted in bad faith. The Township further contends that it discussed these two issues with the PBA and therefore should not be found to have refused to negotiate in good faith. Finally, the Township argues that the PBA has not explained why its actions violated 5.4a(1).

Section 5.3 of the Act requires that "proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established." Section 5.4a(5) prohibits public employers from refusing to negotiate in good faith with the majority representative concerning terms and conditions of employment. The Act requires negotiations, but not agreement. Hunterdon Cty. Freeholder Bd. and CWA, 116 N.J. 332, 338 (1989). An employer violates 5.4a(5) and, derivatively, a(1) when it refuses to negotiate over a mandatorily negotiable employment condition and when it unilaterally implements such an employment condition.

A dispute over the negotiability of a negotiations proposal can be resolved through a scope of negotiations petition. If a subject is found to be mandatorily negotiable, neither party will have been found to have violated its obligation to negotiate in good faith. In this case, rather than file a scope petition seeking a determination that the two disputed issues were not mandatorily negotiable, the Township acted unilaterally and at its peril. It did not file its scope petition until after it had taken unilateral action and the PBA had filed an unfair practice charge.

Not all violations of 5.4a(5) are predicated on a showing of illegal intent or subjective bad faith. A public employer that unilaterally establishes a mandatorily negotiable term and

condition of employment violates the Act regardless of its intent. Hunterdon.

The Township met with the PBA and discussed many aspects of the promotional policy. The Township's papers make clear, however, that it discussed rather than negotiated over the two disputed aspects of the policy. Negotiations require dialogue between two parties with an intent to achieve common agreement rather than an employee organization presenting its view and the employer considering it and later announcing its decision. West Paterson Bd. of Ed., P.E.R.C. No. 77, NJPER Supp. 333 (¶77 1973). Accordingly, we grant partial summary judgment and order the employer to rescind and negotiate over the two disputed aspects of the promotional policy. That remedy places the parties back in the position they would have occupied had the employer not committed an unfair practice.

In addition to an order to rescind and negotiate over the disputed provisions, the PBA seeks an order rescinding all promotions made pursuant to the unilaterally adopted policy. We reject that request. The two disputed issues involve the order of the components of the promotional process and when results of the written examination will be disclosed. Nothing in the parties' submissions suggests that the results of the promotional process would have been any different had the PBA's positions on these two issues been adopted by the Township and incorporated

into its promotional policy. We note in this regard that the Township had a prerogative not to promote any candidates who did not pass the written examination, regardless of when that test was taken during the promotional process or when the results were disclosed.

We sever CO-2003-329 from the consolidated Complaint and therefore this decision constitutes a final administrative action in that case.

ORDER

Partial summary judgment is granted. The Township of Piscataway is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by unilaterally establishing the order of the components of the promotional process and when the results of the written promotional examination will be disclosed.

2. Refusing to negotiate in good faith with the PBA concerning terms and conditions of employment of employees in its unit, particularly by unilaterally establishing the order of the components of the promotional process and when the results of the written promotional examination will be disclosed.

B. Take this action:


1. Rescind and negotiate over the portions of the June 3, 2003 promotional policy involving the order of the various components of the promotional process and when results of the written examination will be disclosed.

2. 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.

3. 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.

CO-2003-329 is severed from the consolidated Complaint.

BY ORDER OF THE COMMISSION



Lawrence Henderson
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller, Katz and Watkins voted in favor of this decision. Commissioner Mastriani abstained from consideration. None opposed.

DATED: February 24, 2005
Trenton, New Jersey
ISSUED: February 24, 2005



**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 employees in the exercise of the rights guaranteed to them by the Act, particularly by unilaterally establishing the order of the components of the promotional process and when the results of the written promotional examination will be disclosed.

WE WILL cease and desist from refusing to negotiate in good faith with Piscataway PBA Local No. 93 concerning terms and conditions of employment of employees in its unit, particularly by unilaterally establishing the order of the components of the promotional process and when the results of the written promotional examination will be disclosed.

WE WILL rescind and negotiate over the portions of the June 3, 2003 promotional policy involving the order of the various components of the promotional process and when results of the written examination will be disclosed.

CO-2003-329

Docket No.

TOWNSHIP OF PISCATAWAY

(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

APPENDIX "A"