

P.E.R.C. NO. 2005-86

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF UNION CITY,

Respondent,

-and-

Docket No. CO-2004-231

UNION CITY PBA LOCAL NO. 8,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies the request of Union City PBA Local No. 8 for special permission to appeal three rulings of the Hearing Examiner during a hearing to resolve the PBA's unfair practice allegations against the City of Union City. The Commission concludes that the PBA has failed to establish extraordinary circumstances that warrant interlocutory review at this time.

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, Martin R. Pachman, P.C., attorneys
(Martin R. Pachman, on the brief)

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

DECISION

On June 20, 2005, Union City PBA Local No. 8 requested special permission to appeal three rulings of the Hearing Examiner during a hearing to resolve the PBA's unfair practice allegations against the City of Union City. On June 21, the City filed a response opposing the request.

The PBA asserts that the Hearing Examiner improperly:

- (1) sustained an objection to questions its attorney asked the chief of police;
- (2) permitted the City to file a written motion to dismiss in the nature of a motion for summary judgment; and
- (3) failed to require the City to provide the PBA with a copy of the hearing transcript.

Special permission to appeal will be granted only in extraordinary circumstances. N.J.A.C. 19:14-4.6(b); Rutgers, The State Univ., P.E.R.C. No. 2005-47, 31 NJPER 79 (¶36 2005) (Commission will not intrude mid-hearing absent extraordinary circumstances).

The PBA has failed to establish extraordinary circumstances justifying review at this time. According to the PBA, the Hearing Examiner sustained an objection to a question posed to the chief of police as to whether he "negotiated" with the PBA regarding sick leave procedures. The Hearing Examiner based her ruling on the City's assertion that an answer to the question called for a legal conclusion. The PBA contends that excluding the testimony is unduly prejudicial and undermines its case. The PBA also asserts that pursuant to N.J.A.C. 19:14-6.6, the rules of evidence are not controlling and should not have been used to preclude testimony.

The City disagrees and contends that the PBA could instead have asked questions about what was said in conversations between the witness and PBA representatives about sick leave procedures. The City also maintains that while the rules of evidence are not controlling, the Hearing Examiner is not required to admit whatever testimony may be offered.

There is no harm to the PBA that cannot be cured at the end of the case. Accordingly, we will not intrude mid-hearing to

consider whether the Hearing Examiner abused her discretion in sustaining the objection. Contrast State of New Jersey, P.E.R.C. No. 2005-62, 31 NJPER 61 (¶30 2005) (granting special permission to appeal given the complexity, magnitude, and unusual nature of the case).

According to the PBA, at the conclusion of its case, the City moved for a directed verdict dismissing the matter. The Hearing Examiner ruled that the motion would have to be made in writing. As a result, further hearing dates were postponed. The PBA objected to the postponement and contends that this ruling unduly prejudices the PBA due to the delay in the presentation of the City's case.

In response, the City states that N.J.A.C. 19:14-4.2(a) provides that motions to dismiss are properly made either orally or in writing.

There are no extraordinary circumstances that warrant interlocutory review of the Hearing Examiner's decision on how to conduct a hearing and decide a motion.

The PBA's third objection is that the Hearing Examiner did not order the City to supply the PBA with a copy of the hearing transcript so it could prepare a reply to the City's motion to dismiss. Rather, the Hearing Examiner stated that the PBA could order a copy of the transcript at its own expense or travel to Trenton to read the Commission's copy of the transcript.

According to the PBA, this was an abuse of discretion and subjects it to unnecessary expense.

The City responds that the rules do not require it to provide a copy of the transcript to the PBA.

Our rules do not require the City to provide the PBA with a copy of the hearing transcript. There are thus no extraordinary circumstances warranting interlocutory review.

ORDER

The request for special permission to appeal is denied.

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, Fuller, Katz and Watkins voted in favor of this decision. None opposed. Commissioner Mastriani was not present.

DATED: June 30, 2005
Trenton, New Jersey
ISSUED: June 30, 2005