

P.E.R.C. NO. 2006-24

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN COUNTY PROSECUTOR'S OFFICE,

Respondent,

-and-

Docket No. CO-2005-225

CAMDEN COUNCIL NO. 10,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission grants Camden Council No. 10's motion for summary judgment and denies the Camden County Prosecutor's cross-motion for summary judgment. Camden Council 10 filed an unfair practice charge and amended charge against the Camden County Prosecutor's Office alleging that the public employer violated the New Jersey Employer-Employee Relations Act when it repudiated an agreement to pay a \$500 bonus to unit members in December 2004. The Commission, having found no valid defense to the allegation that the Prosecutor repudiated an agreement to provide \$500 bonuses for 2004, orders the Prosecutor to take steps necessary to make those payments within 30 days. The Commission also orders prejudgment interest.

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, Office of County Counsel, M. Lou Garty, County Counsel (M. Lou Garty, on the brief)

For the Charging Party, Jennings Sigmond, attorneys (James Katz, on the brief)

DECISION

On February 28 and March 18, 2005, Camden Council No. 10 filed an unfair practice charge and amended charge against the Camden County Prosecutor's Office. The charge, as amended, alleges that the public employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1) and (5),^{1/} when it repudiated an agreement to pay a \$500 bonus to unit members in December 2004.

^{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 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. . . ."

On June 29, 2005, a Complaint and Notice of Hearing issued. On July 11, Camden County filed an Answer. It states that although the Prosecutor and the union signed a document providing for the \$500 bonus, this agreement was never ratified by the County Board of Chosen Freeholders as required by law, and therefore was never authorized and thus could not be repudiated; funds in the salary and wages line item of the Prosecutor's budget were insufficient to pay the bonus due to retirement payouts at the end of 2004; the charge was not timely presented and should be dismissed; and the contract was not signed by the union's authorized negotiations representative.

On July 14, 2005, Council No. 10 moved for summary judgment. On August 4, the Prosecutor's Office filed a response and cross-motion. On August 26, Council No. 10 filed a response. On September 23, the Chairman referred the motion and cross-motion to the full Commission. N.J.A.C. 19:14-4.8.

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 following are the undisputed material facts.

1. Camden Council No. 10 is the majority representative of clerical employees employed by the Camden County Prosecutor's Office.

2. The Union and the Prosecutor have been parties to a series of collective negotiations agreements. The most recent is effective from January 1, 2002 through December 31, 2005. That agreement was signed on January 29, 2003 by the Prosecutor and three representatives of Council No. 10, including Karl Walko and Beatrice Kaelin. Walko is Council No. 10's president. Kaelin is on its negotiating committee. The 2002-2005 agreement was not made subject to ratification or approval by the County.

3. On January 8, 2003, the union's negotiating committee and the Prosecutor entered into a letter of agreement to provide a \$500 supplemental check to each unit member effective December 1, 2002 and to be continued to be paid out on December 1 of each subsequent year. The agreement was signed by Kaelin on behalf of the Council No. 10 negotiating committee and an Assistant Prosecutor and the Prosecutor. The supplemental agreement was never ratified by the Freeholders. According to Walko, grievance settlements and side letter agreements involving various negotiations units of Camden County employees have never been ratified by the Freeholders.

4. Council No. 10 President Walko was not involved in negotiating and did not execute the January 8 agreement. Nothing

in Council No. 10's bylaws requires that the union president sign all negotiated agreements.^{2/}

5. The \$500 payment for 2002 was made on or about February 21, 2003. The payment for 2003 was made on or about November 26, 2003.

6. In December 2004, representatives of the Prosecutor's Office notified Council No. 10 that the \$500 bonus would not be paid for 2004. No attempt was made to negotiate before eliminating the bonus.

7. When the Prosecutor requested payment of the \$500 bonus for 2004, the salary and wages line item of his budget did not cover the payments.

Section 5.3 of the Act requires that agreements on terms and conditions of employment be embodied in writing and signed by the authorized representatives of the public employer and the majority representative. Section 5.4 makes it an unfair practice for a public employer to repudiate an agreement over a term and condition of employment. State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984); see

^{2/} Frank Cirri has been Camden County's Director of Human Resources since the spring of 2005. In his certification, Cirri states that it is his understanding that Council No. 10 President Walko is the exclusive authorized representative empowered and authorized to bargain on behalf of all the units of the Council No. 10 union. Cirri was not present during and did not participate in the relevant negotiations and we do not accept his understanding as a fact.

also Bridgewater Tp., P.E.R.C. No. 95-28, 20 NJPER 399 (¶25202 1994), aff'd 21 NJPER 401 (¶26245 App. Div. 1995).

The parties agreed to provide bonuses each year and the Prosecutor failed to make the payments due in December 2004. Absent a valid defense, the Prosecutor will have violated the Act by repudiating that agreement. We now consider the Prosecutor's defenses.

The Prosecutor's Office contends that it is precluded from paying the bonuses absent approval of the agreement by the Board of Chosen Freeholders. It cites N.J.S.A. 2A:157-21, a portion of the County Detectives and County Investigators Act, but we agree with Council No. 10 that this statute does not apply to the Prosecutor and that the Prosecutor is an independent constitutional officer with the authority to enter into binding agreements.

The Prosecutor, not the County, is the public employer for purposes of collective negotiations. Mercer Cty. and Mercer Cty. Prosecutor, P.E.R.C. No. 78-77, 4 NJPER 220 (¶4110 1978), aff'd 172 N.J. Super. 411 (App. Div. 1980). The Prosecutor has the authority to enter into binding agreements over salaries. Id. at 414; see also Middlesex Cty. Prosecutor, P.E.R.C. No. 91-22, 16 NJPER 491 (¶21214 1990), aff'd 255 N.J. Super. 333 (App. Div. 1992) (prosecutor violated its negotiations obligation by unilaterally adopting county policy that rescinded practice of

granting employees longevity credit for prior government service). Even if Freeholder approval of the bonuses were required, the Prosecutor would be obligated to seek that approval. See Denville Tp., P.E.R.C. No. 81-146, 7 NJPER 359 (¶12162 1981); cf. State of New Jersey, P.E.R.C. No. 91-107, 17 NJPER 310 (¶22137 1991) (Governor could agree to seek funding for negotiated salaries and benefits).

The Prosecutor's Office next argues that the bonus agreement was not enforceable because it did not have sufficient funds to provide the additional compensation and it cannot be compelled to expend discretionary funds. It cites Tate v. Amato, 220 N.J. Super. 235 (App. Div. 1987), which upheld a county executive's refusal to fill vacant positions in a prosecutor's office because the executive desired to avoid exceeding spending limits.

Council No. 10 responds that the absence of funding is not a defense to an allegation of repudiating a negotiated agreement.

Tate v. Amato is distinguishable and instructive. It involved the filling of vacant positions, not the funding of negotiated increases. Nevertheless, the Court observed that if the prosecutor believed that its budget funding was inadequate, it could apply to the assignment judge of the Superior Court for an order directing the county freeholders to fund increased expenditures. In re Application of Bigley, 55 N.J. 53 (1969); N.J.S.A. 2A:158-7 (amounts expended by prosecutor shall not

exceed amount fixed by freeholders unless such expenditure is specifically authorized by order of the assignment judge). An employer cannot simply refuse to pay compensation called for by a negotiated agreement. See, e.g., Wall Tp., P.E.R.C. No. 92-95, 18 NJPER 165, 167 (¶23709 1992) (employer does not have statutory right to exclude salary upgrades from the budget and then determine that other budgeted funds are insufficient to cover them); Manchester Tp., P.E.R.C. No. 83-161, 9 NJPER 392, 393 (¶14178 1983) (having agreed to wage increase, employer was obligated to appropriate necessary funds).

The Prosecutor's Office next argues that the person who signed the amendment for Council No. 10 was not the authorized negotiations representative. It contends that Union President Karl Walko did not know of the agreement because he was purposely excluded from negotiations and that Kaelin was acting on behalf of an unauthorized splinter group. Council No. 10 responds that Kaelin reached the agreement on behalf of the Council No. 10 negotiating committee and that Council No. 10, not Walko, is the majority representative.

The record offers no basis for finding that Kaelin was not properly representing Council No. 10 when she entered into the letter of agreement for bonuses. That agreement was made in January 2003 and the Prosecutor abided by the agreement for two years. Council No. 10's president has certified that Kaelin was

representing the majority representative and that nothing in the union's bylaws requires the president to sign all agreements.

Finally, the Prosecutor's Office argues that if the union prevails, interest should not be awarded because such relief was not requested in the initial charge and amendment. Council No. 10 responds that this Commission uniformly awards interest to make employees whole.

Having found no valid defense to the allegation that the Prosecutor repudiated an agreement to provide \$500 bonuses for 2004, we will order the Prosecutor to take the steps necessary to make those payments within 30 days. We will also order prejudgment interest as we normally do absent overriding and compelling equitable reasons and regardless of whether interest is specifically demanded in a charge. Collingswood Bd. of Ed., P.E.R.C. No. 86-50, 11 NJPER 694 (¶16240 1985). These remedies are necessary to make the employees whole for the repudiation of the parties' agreement. See generally, Galloway Tp. Bd. of Ed. v. Galloway Tp. Ass'n of Ed. Sec., 78 N.J. 1 (1978).

ORDER

Council No. 10's motion for summary judgment is granted. The Camden County Prosecutor's cross-motion for summary judgment is denied. The Prosecutor 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 repudiating an agreement to provide clerical employees represented by Council No. 10 with \$500 bonuses.

2. Refusing to negotiate in good faith with Council No. 10 concerning terms and conditions of employment, particularly by repudiating an agreement to provide clerical employees represented by Council No. 10 with \$500 bonuses.

B. Take this action:

1. Within 30 days, take the steps necessary to pay the \$500 bonuses to unit employees that were due in December 2004, plus interest at the rate set by R. 4:42-11(a).

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.

BY ORDER OF THE COMMISSION

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

Lawrence Henderson
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. None opposed. Commissioner Katz was not present.

DATED: October 27, 2005
Trenton, New Jersey
ISSUED: October 27, 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 New Jersey Employer-Employee Relations Act, particularly by repudiating an agreement to provide clerical employees represented by Camden Council No. 10 with \$500 bonuses.

WE WILL cease and desist from refusing to negotiate in good faith with Camden Council No. 10 concerning terms and conditions of employment, particularly by repudiating an agreement to provide clerical employees represented by Camden Council No. 10 with \$500 bonuses.

WE WILL take the steps necessary to pay the \$500 bonuses to unit employees that were due in December 2004, plus interest at the rate set by R. 4:42-11(a).

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CAMDEN COUNTY PROSECUTOR'S OFFICE

(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