

P.E.R.C. NO. 2006-22

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PBA LOCAL 136,

Respondent,

-and-

Docket No. CI-2003-036

BARRY WIESER,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies a motion for summary judgment filed by PBA Local 136 seeking dismissal of an unfair practice charge filed by Barry Wieser. The Commission finds that the PBA has not supported its motion with any affidavits or certifications. The Commission also determines that the PBA's arguments that the allegations in the charge are facially insufficient to support a claim of discrimination is in essence an appeal of the Director of Unfair Practice's decision to issue a Complaint. No timely request was filed under N.J.A.C. 19:14-2.3(c) and the Commission does not consider those arguments. The matter is remanded to hearing.

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, Loccke & Correia, attorneys
(Michael A. Bukosky, of counsel)

For the Charging Party, Fusco & Macaluso, P.A. (Ciro
Spina, III, of counsel)

DECISION

On August 11, 2005, PBA Local 136 filed a second motion for summary judgment seeking dismissal of an unfair practice charge filed by Barry Wieser. See Wayne Tp., P.E.R.C. No. 2005-73, 31 NJPER 144 (¶63 2005).^{1/} The charge alleges that the PBA violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it failed to provide Wieser, an FOP member, with a copy of the collective negotiations agreement between Wayne Township and the PBA and when it refused to cease collecting

^{1/} This decision dismissed the allegations against the Township and rejected the PBA's argument that the Complaint should be dismissed as moot.

representation fees from his pay. The Director of Unfair Practices issued a Complaint on the charge on September 27, 2004.

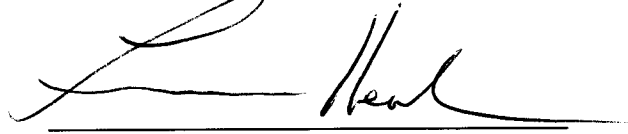
The motion contends that Wieser has not presented any evidence to support the allegations in the charge and that the allegations do not state a claim of discrimination under the Act. Wieser has not filed a response to the motion.

We deny the motion. The respondent has not supported its motion for summary judgment with any affidavits or certifications, see P.E.R.C. No. 2005-73 (denying charging party's cross-motion for summary judgment since allegations were not supported by affidavits or certifications), and absent submission of such evidence, a respondent need not present pre-hearing evidence to support the allegations in a charge. Also, the respondent's argument that the allegations in the charge are facially insufficient to support a claim of discrimination is in essence an appeal of the decision of the Director of Unfair Practices to issue a Complaint. N.J.A.C. 19:14-2.3(c) requires that such an appeal must be made by seeking special permission to appeal within five days of the issuance of the Complaint. Respondent did not file a timely request in this case so we do not consider this issue further. Under these circumstances, we deny the PBA's motion and remand this matter to the Hearing Examiner.

ORDER

The PBA's motion for summary judgment 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 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