

P.E.R.C. NO. 2006-40

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 grants PBA Local 136's motion for reconsideration of P.E.R.C. No. 2005-22. In that decision, the Commission denied the PBA's motion for summary judgment seeking dismissal of an unfair practice charge filed by Barry Wieser. The Commission found that the motion was not supported by any affidavits or certifications and that the argument that the allegations in the charge were facially insufficient to support a claim was in essence an untimely appeal of the decision of the Director of Unfair Practices to issue a Complaint. The charging party did not respond to the motion for reconsideration. The Commission grants summary judgment on the representation fee issue and dismisses the Complaint.

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)

DECISION

On November 14, 2005, PBA Local 136 moved for reconsideration of P.E.R.C. No. 2006-22, 31 NJPER 321 (¶126 2005). In that decision, we denied the PBA's motion for summary judgment seeking dismissal of an unfair practice charge filed by Barry Wieser. We found that the motion was not supported by any affidavits or certifications and that the argument that the allegations in the charge were facially insufficient to support a claim was in essence an untimely appeal of the decision of the Director of Unfair Practices to issue a Complaint. The charging party has not responded to the motion for reconsideration.

Along with its motion, the PBA has filed a certification from its president attaching the 1970 letter from the PBA to the charging party that denies him membership in the PBA for reasons

other than FOP membership. We would not ordinarily consider a new certification in a motion for reconsideration, but we will do so because the letter being relied upon was attached to the unfair practice charge and the charging party has not objected to its consideration.

Reconsideration will be granted only in extraordinary circumstances. N.J.A.C. 19:14-8.4. We grant reconsideration on the representation fee issue because the certification now before us shows that there is no material dispute of fact on that issue and conducting a hearing on that issue would be a waste of administrative resources and would unnecessarily prolong this dispute.

The 1970 document indicates that the charging party was denied PBA membership for reasons other than dual membership in the FOP. The charging party has not presented any contrary facts in response to the PBA's motion for summary judgment or this motion for reconsideration. Under these circumstances, we grant summary judgment to the PBA on the allegation that the PBA illegally collected representation fees from the charging party because it denied him PBA membership because of his FOP membership.

The only remaining allegation in the Complaint is that the PBA breached its duty of fair representation by failing to provide the charging party with a copy of the collective

negotiations agreement because of his FOP membership. The PBA did not provide any affidavit or certification to support its motion for summary judgment on this allegation. Nor can that allegation be addressed in this motion for reconsideration.

ORDER

Reconsideration is granted. Summary judgment on the representation fee issue is granted and the Complaint is dismissed with respect to that issue.

BY ORDER OF THE COMMISSION

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

ISSUED: December 15, 2005

Trenton, New Jersey