

P.E.R.C. NO. 2006-55

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF PARSIPPANY-TROY HILLS,

Respondent,

-and-

Docket Nos. CO-2005-160  
CO-2006-034

P.B.A. LOCAL 131,

Charging Party.

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TOWNSHIP OF PARSIPPANY-TROY HILLS,

Respondent,

-and-

Docket No. CO-2005-161

P.B.A. LOCAL 131A (SUPERIOR OFFICERS),

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies a motion for summary judgment filed by the Township of Parsippany-Troy Hills. P.B.A. Locals 131 and 131A (Superior Officers) filed unfair practice charges and amended charges alleging that the Township violated the New Jersey Employer-Employee Relations Act when it unilaterally issued a new employee handbook that allegedly altered and impacted on negotiable terms and conditions of employment and when it refused to negotiate over new policies and procedures that may change or impact negotiable terms and conditions of employment. The PBA also filed a charge alleging that the Township violated the Act when a superior officer polled unit members about their position on a pending grievance arbitration. In denying summary judgment, the Commission holds that the question of whether the Township violated the Act by issuing a policy manual that allegedly changed terms and conditions of employment cannot be decided at this juncture. The Commission also holds that whether the superior officer was acting as a representative or agent of the Township is a fact-sensitive question best answered after an evidentiary 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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Charging Party.

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Docket No. CO-2005-161

P.B.A. LOCAL 131A (SUPERIOR OFFICERS),

Charging Party.

Appearances:

For the Respondent, Laufer, Knapp, Torzewski & Dalena,  
attorneys (Fredric M. Knapp, of counsel and on the  
brief; Meredith B. Messing, on the brief)

For the Charging Parties, Courter, Kobert & Cohen,  
P.C., attorneys (Howard A. Vex, on the brief)

DECISION

This case comes to us by way of a motion for summary judgment. On December 17, 2004, and May 31 and June 1, 2005, PBA Locals 131 and 131A (Superior Officers) filed unfair practice charges and amended charges against the Township of Parsippany-Troy Hills (CO-2005-160 & CO-2005-161). The charges allege that the employer violated the New Jersey Employer-Employee Relations

Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1) and (5),<sup>1/</sup> when it unilaterally issued a new employee handbook that allegedly altered and impacted on negotiable terms and conditions of employment and when it refused to negotiate over new policies and procedures that may change or impact negotiable terms and conditions of employment. The charges further allege that the way the handbook was distributed chilled the exercise of protected rights. On July 20, 2005, Complaints and Notices of Hearing issued and the cases were consolidated.

On July 25, 2005, PBA Local 131 filed another unfair practice charge against the Township (CO-2006-034). That charge alleges that the employer violated 5.4a(1) and (2)<sup>2/</sup> of the Act when a superior officer polled unit members about their position on a pending grievance arbitration at a closed-door staff meeting. On October 27, a Complaint and Notice of Hearing issued and the case was consolidated with the other two pending charges.

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<sup>1/</sup> 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. . . ."

<sup>2/</sup> This provision prohibits public employers, their representatives or agents from: "(2) Dominating or interfering with the formation, existence or administration of any employee organization."

In its Amended Answer, the Township admits that it altered a blood donation policy, but states that the policy has been voluntarily reinstated. It denies that it threatened employees or unilaterally altered any mandatorily negotiable terms and conditions of employment. The Township also admits that the superior officer scheduled a staff meeting, but denies that the officer was authorized to discuss the pending grievance, and it states that it is without sufficient information to admit or deny the allegation that the officer asked others to give their opinions concerning the issues in the pending grievance.

On November 10, 2005, the Township filed a motion for summary judgment. On December 6, Hearing Examiner Wendy L. Young granted the charging parties' request to amend the Complaint, finding that allegations of additional changes made by the issuance of the handbook were timely because they related back to the original cause of action. On December 22, the Township filed an amended motion for summary judgment supported by certifications of its police chief and its attorney. On December 27, the charging parties filed a response opposing summary judgment.

The Township argues that the Complaints in CO-2005-160 and 161 should be dismissed because the matters were either settled or have been submitted to grievance arbitration. It further argues that the allegations in the most recent amendments are

untimely. It argues that the Complaint in CO-2006-034 should be dismissed because the superior officer's alleged discussion about internal union matters was conducted without Township knowledge or ratification and was not on the Township's behalf.

As to CO-2005-160 and CO-2005-161, the charging parties respond that the subsequent resolution of some of the unilateral changes many months later via the grievance procedure did not erase the unfair practices. In addition, the charging parties assert that many issues have yet to be resolved and that they cannot afford to challenge through grievance arbitration each and every unilateral change implemented by Township. As to CO-2006-034, the Local 131 responds that there are genuine issues of material fact as to whether the superior officer's discussion with subordinates constituted unfair practices under the circumstances. It asserts that to find an unfair practice, we need not find that the officer's action was first authorized by the chief or Township.

On January 17, 2006, the Chairman referred this 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).

We deny summary judgment in CO-2005-160 and CO-2005-161. While challenges to particular changes in terms and conditions of employment may ultimately be resolved by deferring to grievance arbitration awards, see State of New Jersey (Stockton State College), P.E.R.C. No. 77-31, 3 NJPER 62 (1977), the larger question of whether the Township violated the Act by issuing a policy manual that allegedly changed or established negotiable terms and conditions of employment cannot be decided at this juncture. Nor can we decide the disputes over issues not before a grievance arbitrator or surrounding how the policy was issued. As for the contention that the most recent amendments are untimely, N.J.A.C. 19:14-1.5 grants the Hearing Examiner the authority to grant requests to amend the Complaint. As we stated in Willingboro Tp. Bd. of Ed., P.E.R.C. No. 2002-43, 28 NJPER 139 (¶33044 2002), permitting this type of amendment before hearing makes more sense than litigating the same issue without an amendment and having to amend the Complaint to conform to the evidence or to consider the issue without an amendment.<sup>3/</sup>

We also deny summary judgment in CO-2006-034. Whether the superior officer was acting as a representative or agent of the employer is a fact-sensitive question best answered after an evidentiary hearing.

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<sup>3/</sup> Any request that the Hearing Examiner stay her hand in considering any particular allegation pending issuance of an arbitration award can be raised to the Hearing Examiner.

ORDER

The Township's motion for summary judgment is denied.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller, Katz and Watkins voted in favor of this decision. None opposed.

ISSUED: January 26, 2006

Trenton, New Jersey