

P.E.R.C. NO. 2006-67

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ENGLEWOOD,

Respondent,

-and-

Docket No. CO-2004-074

ENGLEWOOD PBA LOCAL 216 (SOA),

Charging Party.

SYNOPSIS

_____The Public Employment Relations Commission denies a motion for summary judgment filed by Englewood PBA Local 216 (SOA). The SOA filed an unfair practice charge against the City of Englewood alleging that the City violated the New Jersey Employer-Employee Relations Act when it refused to pay three lieutenants in accordance with the terms stated by the chief of police in his response at step one of the grievance procedure. The Commission concludes that although there are no material facts in dispute, on this limited record it cannot discern how payment in accordance with an arbitration award differs from payment under the chief's grievance responses and constitutes a repudiation of the contract.

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, William Rupp, attorney

For the Charging Party, Loccke & Correia, P.A.,
attorneys (Merick H. Limsky, of counsel; Merick H.
Limsky and Marcia J. Tapia, on the brief)

DECISION

On February 1, 2006, Englewood PBA Local 216 (SOA) moved for summary judgment on an unfair practice charge it filed against the City of Englewood. The charge was filed on September 8, 2003 and amended on October 30, 2003.^{1/} The SOA alleges that the City violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1), (3) and (5),^{2/} when it

1/ Hearings were postponed pending settlement discussions.

2/ 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. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this
(continued...)

refused to pay three lieutenants in accordance with the terms stated by the chief of police in his response at step one of the grievance procedure. The charge alleges that the three lieutenants served in their acting capacities for over one year and should have been paid at step one of the captain's rate for their first year in those positions and then at step two for their second year in those positions.

A Complaint and Notice of Hearing issued on January 6, 2004. The Answer admits that the City paid the three lieutenants at the captain's rate for the time period covering eight days before their respective grievances through October 3, 2003, when their temporary designations as officer in charge were rescinded. It denies that all three lieutenants served in their acting capacities for over one year or that any of them are entitled to be paid at step two of the captain's rate.

The motion is supported by the certification of a police lieutenant. The City has not responded to the motion. On March

2/ (...continued)
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, or refusing to process grievances presented by the majority representative."

15, 2006, the Chairman referred the motion to the full Commission. N.J.S.A. 19:14-4.8.^{3/}

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).

What follows are undisputed material facts.

The SOA represents all supervisory officers holding the rank of sergeant and above, excluding the deputy chief and chief. On November 26, 2001, the SOA filed a grievance on behalf of Lt. William J. Hollenfer seeking acting captain's pay based on Hollenfer's designation as officer in charge of the Criminal Investigation Bureau. On August 15, 2002, an arbitrator sustained the grievance.

The SOA then filed three additional grievances on behalf of three other lieutenants seeking acting captain's pay for performing the duties of an officer in charge. On August 21, 2002, the SOA alleged that Lieutenant Steven Sabo had been working as the officer in charge of the Criminal Investigations Bureau since January 7, 2002. On September 4, the chief sustained the grievance stating that "[i]n light of the recent

^{3/} We deny the PBA's request for oral argument. Its positions have been fully briefed.

arbitration ruling, on this assignment, I am in agreement that you should be compensated accordingly." On October 21, the SOA alleged that Lieutenant John Banta had been working as the Operations Officer and should be paid in an acting captain's position retroactive to the date of his assignment. That same day, the SOA alleged that Lieutenant Arthur O'Keefe was designated as the officer in charge of the Uniformed Patrol Division and should be paid in an acting captain's position retroactive to his date of assignment. On October 22, the chief sustained those two grievances, stating that Banta and O'Keefe are "entitled to the appropriate compensation for a Captain with two years and four months experience."

The City then filed an action in Superior Court seeking to vacate the arbitration award that triggered the subsequent grievances. Its complaint asserted that the chief did not have the authority to designate an officer in charge. The City also named the three other lieutenants in its complaint. The Court dismissed the complaint and confirmed the arbitration award.

The three lieutenants then filed the appropriate paperwork for compensation at the captain's rate of pay. According to Hollenfer, they were informed that they would be "paid in accordance with the arbitration decision, but not the relief that the chief described in his answers to the grievances."

The SOA argues that by refusing to pay the grievants in accordance with the chief's determination, the City has repudiated the contract and the grievance procedure.

Although there are no material facts in dispute, we nevertheless deny summary judgment. On this limited record, we cannot discern how payment in accordance with the arbitration award differs from payment under the chief's grievance responses and constitutes a repudiation of the contract. Accordingly, summary judgment must be denied.

ORDER

Summary judgment is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: March 30, 2006

Trenton, New Jersey