

P.E.R.C. NO. 2007-28

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MAPLEWOOD,

Respondent,

-and-

Docket No. CO-2006-197

MAPLEWOOD TOWNSHIP PBA LOCAL NO. 44,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission grants the appeal of the Maplewood Township PBA Local No. 44 of D.U.P. No. 2007-2. In that decision, the Director of Unfair Practices dismissed an unfair practice charge as untimely. The Commission concludes that if the facts are as alleged by the PBA, it had every reason to believe that there was no dispute and no reason to file an unfair practice charge earlier. The Commission remands the matter to the Director for the issuance of a 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, Genova Burns & Vernioia, attorneys  
(Sandro Polledri, of counsel)

For the Charging Party, Marc D. Abramson, consultant

DECISION

On October 2, 2006, the Maplewood Township PBA Local No. 44 appealed D.U.P. No. 2007-2, 32 NJPER 296 (¶123 2006). In that decision, the Director of Unfair Practices dismissed an unfair practice charge as untimely. On October 10, the Township filed a response urging that we sustain the dismissal.

For purposes of determining whether a Complaint should be issued, the essential facts are not in dispute. On February 15, 2005, the Township adopted a resolution promoting seven police officers to sergeant and ranking them in order. The resolution did not specify how its ranking was determined. This was the first time that so many officers had been promoted at the same time. Beginning the week of March 14, the newly promoted

sergeants selected their vacations and tours for the remainder of the 2005 calendar year pursuant to rank order assigned by the Township Committee in its February 15 Resolution.

In March 2005, Vincent DeCicco, the new President of the PBA, became aware that there was a seniority issue surrounding the recent promotions. He researched the issue and learned that after the last set of multiple promotions in February 1994, officers were assigned seniority in rank by date of hire.

In April 2005, the Police Chief allegedly told DeCicco that he did not see a problem with honoring seniority by hire date as long as the Township Committee approved how it would be implemented. In May, the Mayor allegedly told DeCicco that neither he nor the Township Committee had a problem with applying seniority in rank by hire date for shift and vacation selection. According to DeCicco, the Mayor and the Chief told him they simply had to decide whether it should be done by resolution, ordinance or departmental rule or regulation. Discussions continued and DeCicco was continually told that the Mayor or Chief was working on it.

In November 2005, an issue arose about implementing a trial work schedule in January 2006 and the ranking of police officers for determining schedule assignments. On January 5, 2006, the Chief allegedly told DeCicco for the first time that he had a problem with the concept of using seniority in rank by date of

hire for multiple promotions. On January 19, DeCicco wrote to the Chief that the PBA considered his refusal to accept such seniority for multiple promotions to be a unilateral change in terms and conditions of employment and demanded negotiations. The Chief did not respond and on February 6, the PBA filed the instant charge.

A Complaint cannot issue if the alleged unfair practice occurred more than six months before the filing of the charge, unless the charging party was prevented from doing so. N.J.S.A. 34:13A-5.4(c).

The Director found that the PBA and the individual officers were aware as early as February 2005 that the Township had ranked the officers by each officer's date of qualifying for promotion - - thus if there was a change in practice, it occurred a year before the filing of the charge. However, the PBA argues that the PBA president provided an affidavit indicating that it was his understanding that the Chief and Mayor agreed with the PBA's position and that discussion was about implementation only. The Township responds that since February 15, 2005, there has been no change, factually or legally, in its position with respect to the sergeants' seniority and that the Director considered the relevant discussions between DeCicco, the Chief and the Mayor and correctly determined that the PBA knew that the issue was not

resolved and that therefore, the PBA was not prevented from filing a timely charge.

We have held that the filing of a grievance does not toll the statute of limitations. State of New Jersey (Dept. of Human Services), P.E.R.C. No. 85-48, 10 NJPER 638 (¶15306 1984). And our Directors have ruled that settlement discussions do not toll the statute of limitations. See, e.g., Monmouth Cty. Sheriff, D.U.P. No. 2003-3, 28 NJPER 395 (¶33141 2002). However, neither line of cases applies where the PBA alleges that the employer's representatives had agreed to its position and that only the details of implementation needed to be worked out. If the facts are as alleged by the PBA, it had every reason to believe that there was no dispute and no reason to file an unfair practice charge.

The allegations in the charge may constitute an unfair practice. N.J.A.C. 19:14-2.1. Accordingly, we will remand this matter to the Director to issue a Complaint. If the facts surrounding the timeliness issue are not as alleged by the PBA, the Township may continue to litigate that issue before the Hearing Examiner, who can decide it based on a full record.

ORDER

This matter is remanded to the Director of Unfair Practices to issue a Complaint.

BY ORDER OF THE COMMISSION

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

ISSUED: November 21, 2006

Trenton, New Jersey