

P.E.R.C. NO. 2007-34

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 made by Englewood PBA Local 216 (SOA) on an amended unfair practice charge it filed against the City of Englewood. The charge, as amended, alleges 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 charge alleges that the three lieutenants served in acting captain 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. The Commission denies summary judgment concluding that it cannot find, on this record, that the City repudiated the grievance procedure by interpreting the grievance responses in accordance with an arbitration award referenced by the chief in one of his grievance responses.

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, Scarinci & Hollenbeck, attorneys
(Ramon E. Rivera, of counsel)

For the Charging Party, Loccke, Correia, Schlager,
Limsky & Bukosky, attorneys (Merick H. Limsky, of
counsel)

DECISION

On July 31, 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. 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),^{1/} when it

1/ 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 act. (5) Refusing to negotiate in good faith with a
(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 acting captain 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.^{2/} The Answer states 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.^{3/}

1/ (...continued)
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."

2/ Hearings were postponed pending settlement discussions.

3/ On March 30, 2006, we denied the SOA's earlier motion for summary judgment. P.E.R.C. No. 2006-67, 32 NJPER 80 (¶40 2006). Although there were no material facts in dispute, we could not discern on the record before us how the City's decision to pay the lieutenants in accordance with an earlier arbitration award differed from payment under the chief's grievance responses and constituted a repudiation of the contract.

The SOA's motion is supported by an undated certification of the former chief of police. On October 27, 2006, the City filed an answering brief and exhibits. The Chairman has referred the motion to the full Commission. N.J.S.A. 19:14-4.8.

Summary judgment will be granted if no material facts are 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. The City argued that the grievance was untimely because it was filed more than four months after the assignment was made rather than within seven days of the occurrence being grieved as specified in step one of the negotiated grievance procedure. However, in his August 15, 2002 award, the arbitrator found that the grievance alleged a continuing violation of the contract. In sustaining the grievance, he awarded retroactive pay commencing eight days prior

to the filing of the grievance (the date the grievance was filed plus the seven days specified in the grievance procedure).

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 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 was designated as the Operations Officer and should be paid in an acting captain's position retroactive to June 20, 2001, the date of his assignment. Also on October 21, 2002, 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 July 17, 2000, the date of his assignment. On October 22, the chief sustained those two grievances, stating that Banta and O'Keefe were "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. On March 13, 2003, the Court dismissed the complaint and granted the SOA's application for confirmation of the arbitration award.

The three lieutenants then filed the appropriate paperwork for compensation at the captain's rate of pay. On October 3, 2003, the City Manager notified Sabo and O'Keefe that they would be paid from seven days prior to the date of their grievances. The manager's notice to Banta did not state why his retroactive pay began October 11, 2002.

In his certification, the chief states that in sustaining the grievances, he provided that the grievants would be awarded retroactive pay to the date their assignments began.

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. The City acknowledges that the chief sustained the grievances, but argues that in relying on the arbitration award, the chief intended that the grievants be compensated according to the arbitrator's award. It further argues that if the SOA disagreed with the manager's decision, it should have filed a grievance within seven days of that occurrence.

N.J.S.A. 34:13A-5.3 requires public employers to negotiate grievance procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions. Such grievance procedures shall be utilized for any dispute covered by the terms of the collective negotiations agreement. Ibid.

N.J.S.A. 34:13A-5.4a(5) makes it an unfair practice for a public employer to refuse to negotiate in good faith with a majority representative or to refuse to process grievances presented by the majority representative. An employer's refusing to honor the binding decision of its grievance representative may constitute a refusal to negotiate in good faith, and, in particular, an unjustifiable refusal to honor the grievance procedures it negotiated for the resolution of contractual disputes. Borough of Keansburg, P.E.R.C. No. 2004-29, 29 NJPER 506 (¶160 2003); Passaic Cty. (Preakness Hosp.), P.E.R.C. No. 85-87, 11 NJPER 136 (¶16060 1985).

That principle does not warrant summary judgment in this case. Although the chief's certification states that he intended that the officers be paid retroactive to the date they began their acting assignments, his grievance responses are not that clear. His response to the Sabo grievance states that "in light of the recent arbitration ruling, on this assignment, I am in

agreement that you should be compensated accordingly." His responses to the Banta and O'Keefe grievances state that they are "entitled to the appropriate compensation for a Captain with two years and four months experience." Given the language of the chief's grievance responses and his reference in the Sabo grievance to the contemporaneous arbitration award limiting retroactive compensation to eight days before the filing of the grievance, we cannot find on this record that the City repudiated the grievance procedure by interpreting the grievance responses in accordance with the arbitration award. Accordingly, we deny summary judgment.

ORDER

The motion for summary judgment is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: December 14, 2006

Trenton, New Jersey