

P.E.R.C. NO. 2007-45

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF PALMYRA,

Respondent,

-and-

Docket No. CO-2006-301

PALMYRA POLICE ASSOCIATION
FOP LODGE 2,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies a motion for summary judgment filed by the Borough of Palmyra. The Borough seeks dismissal of an unfair practice charge filed against the Borough by the Palmyra Police Association, FOP Lodge 2 alleging that the Borough violated the New Jersey Employer-Employee Relations Act when it refused to sign a collective negotiations agreement. The Commission holds that a public employer's representative may commit an employer to sign a negotiated agreement and a public employer may be deemed to have bound itself to a memorandum of agreement unless it has reserved a right to ratify the agreement by formal vote. The Borough asserts that it had reserved such a right, but there are substantial material facts in dispute concerning whether it did so.

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, Ruderman & Glickman, P.C.,
attorneys (Mark S. Ruderman, of counsel and on the
brief)

For the Charging Party, Markowitz & Richman, attorneys,
(Stephen C. Richman of counsel; Stephen C. Richman and
Matthew D. Areman, on the brief)

DECISION

On June 1, 2006, Palmyra Police Association FOP Lodge 2,
filed an unfair practice charge against the Borough of Palmyra.
The charge alleges that the Borough violated the New Jersey
Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when
it refused to sign a collective negotiations agreement.

The Borough has filed a motion for summary judgment
supported by an affidavit of its Mayor. The FOP has filed a
brief opposing summary judgment supported by an affidavit of its

President.^{1/} The motion has been referred to the Commission for disposition. N.J.S.A. 19:14-4.8(a).

The FOP's charge alleges that after the parties had reached agreement on a successor contract, including four percent raises that had been proposed by Borough representatives, and after the FOP ratified the agreement, the Police Chief advised the FOP that the Borough had financial problems and could not afford the agreed-upon salary provisions.

The Borough asserts that ratification by the Council was necessary before a binding agreement could have been reached. The Mayor certifies that in his twelve years in office, "suggested police agreements" have been brought to the Borough Council to vote up or down. However, the FOP's President certifies that Council ratification has never been a condition precedent to finalizing an agreement and that no one representing the Borough made any oral or written qualifying statements or exhibited any conduct limiting their authority to reach a binding agreement.

An employer's representative may commit an employer to sign a negotiated agreement and a public employer may be deemed to have bound itself to a memorandum of agreement unless it has reserved a right to ratify the agreement by formal vote. Long

^{1/} We accept the Borough's explanation concerning the late submission of the Mayor's affidavit and will consider it in connection with its application.

Beach Tp., P.E.R.C. No. 88-102, 14 NJPER 329, 330 (¶19122 1988); East Brunswick Bd. of Ed., P.E.R.C. No. 77-6, 2 NJPER 279, 281 (1976). The Borough asserts that it had reserved such a right, but there are substantial material facts in dispute concerning whether it did so. Accordingly, the motion for summary judgment must be denied. N.J.A.C. 19:14-4.8(d); Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995).

ORDER

The motion for summary judgment is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: January 25, 2007

Trenton, New Jersey