

P.E.R.C. NO. 2008-16

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,  
AFFILIATED WITH FOP LODGE 2,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Palmyra Police Association, affiliated with FOP Lodge 2 for reconsideration of P.E.R.C. No. 2008-5. In that decision, the Commission dismissed an unfair practice charge after finding that the Borough of Palmyra's negotiators did not have the apparent authority to enter into a successor contract without Borough Council ratification. The Commission's grants reconsideration because its decision did not separately address the Association's allegation that the Borough violated its duty to negotiate in good faith when it engaged in surface and regressive bargaining. Under all the circumstances, the Commission does not find that the Borough acted in bad faith in not ratifying the draft contract. The Commission affirms its decision dismissing the 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, Ruderman & Glickman, P.C.,  
attorneys (Mark S. Ruderman, of counsel)

For the Charging Party, Markowitz & Richman, attorneys  
(Stephen C. Richman, of counsel)

DECISION

The Palmyra Police Association, affiliated with FOP Lodge 2 has moved for reconsideration of P.E.R.C. No. 2008-5, \_\_\_ NJPER \_\_\_ (¶\_\_ 2007). In that decision, we dismissed an unfair practice charge after finding that the Borough of Palmyra's negotiators did not have the apparent authority to enter into a successor contract without Borough Council ratification. We grant reconsideration because our decision did not separately address the Association's allegation that the Borough violated its duty to negotiate in good faith when it engaged in surface and regressive bargaining. N.J.A.C. 19:14-8.4. However, we affirm our decision dismissing the Complaint.

The Association argues that because we based our decision on a reassessment of our case law, we should have applied any change prospectively. We disagree. A ruling will be applied prospectively to avoid a substantial inequitable result. Montells v. Haynes, 133 N.J. 282 (1993). For example, in Montells, the Supreme Court applied a two-year statute of limitations prospectively in cases brought under the Law Against Discrimination; it reasoned that plaintiffs could have missed the filing deadline by reasonably relying on earlier cases approving a six-year statute of limitations. Here, there is no evidence that the Association relied on our prior case law or that it would have or could have acted any differently regarding employer ratification had it known that we would hold that the Council had a right to ratify.

The Association further contends that even considering the history of Council approval of contracts, its charge should have been sustained. The Association asserts that although the Borough had consistently passed resolutions authorizing past police contracts, that action "was nothing more than a ministerial act" under N.J.S.A. 40A:9-165. That statute requires that municipal governing bodies fix employee salaries by ordinance. The past Borough resolutions, however, were not ordinances fixing salaries. They were resolutions adopted by a majority of the Mayor and Council authorizing the Police

Committee to execute collective negotiations agreements between the Borough and the Association (R-3). That the Council had never rejected a tentative agreement does not mean that it did not have the right to do so in this instance.

Finally, the Association asserts that we disregarded its allegation that the Borough violated its duty negotiate in good faith when it engaged in surface and regressive bargaining. We did not address this issue separately and have therefore granted reconsideration to do so now.

An allegation that a party engaged in bad faith surface bargaining requires an examination of the totality of the party's conduct. Downe Tp. Bd. of Ed., P.E.R.C. No. 86-66, 12 NJPER 3 (¶17002 1985).

The Association's theory is that since it accepted the salary and overtime proposals presented by the Borough's own negotiators, the Borough Council was bound to ratify a contract containing those proposals. While we are troubled by a governing body's not accepting terms initially proposed by its own representatives, there is no per se rule that a governing body loses a right to ratify when its initial proposals are accepted and there is no evidence that a majority of the Council knew of or had approved the proposals its negotiations team would make. The Council members who were on the negotiations team acted in good faith and properly supported ratification, as they were

legally bound to do, but the other Council members were free to judge the acceptability of the terms being submitted to them in light of the economic circumstances then existing. Those circumstances included a fiscal crisis that led to decisions to close the welfare office, lay off a tax clerk and part-time maintenance employee, and raise taxes 14 percent. Under the totality of the circumstances, we do not find that the Borough acted in bad faith in not ratifying the draft contract.

ORDER

Reconsideration is granted. The Complaint is dismissed.

BY ORDER OF THE COMMISSION

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

Chairman Henderson, Commissioners DiNardo, Fuller and Watkins voted in favor of dismissing the Complaint. Commissioner Buchanan voted against dismissing the Complaint.

ISSUED: September 27, 2007

Trenton, New Jersey