

P.E.R.C. NO. 2010-49

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY STATE JUDICIARY
(CAMDEN VICINAGE),

Respondent,

-and-

Docket No. CO-2008-287

PROBATION ASSOCIATION OF NEW JERSEY
(CASE-RELATED PROFESSIONAL UNIT),

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies a motion for summary judgment filed by the New Jersey State Judiciary (Camden Vicinage) in an unfair practice case filed by the Probation Association of New Jersey (Case-Related Professional Unit). The charge alleges that the Judiciary and its Camden Vicinage violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1), (2), (3), (4) and (5), by conspiring to carry out a campaign of retaliation against PANJ, its members and representatives in connection with interrogations conducted by members of an outside law firm in October 2007, and through the issuance of written disciplinary warnings to employees in November stemming from an alleged September 14 "sick-out." The Commission finds a dispute over material facts relating to the sick out sanctions, denies the motion for summary judgment, and remands the case for a hearing. The Commission notes that its decision does not preclude the Judiciary from attempting to establish that PANJ agreed not to file an unfair practice charge over the employer's response to the alleged "sick out."

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, Office of Counsel to the
Administrative Director (Nancy M. Mahony, on the brief)

For the Charging Party, Fox & Fox, attorneys (David I.
Fox and Lynsey A. Stehling, of counsel and on the
brief)

DECISION

The New Jersey State Judiciary (Camden Vicinage) moves for summary judgment and an order dismissing this unfair practice charge filed on March 31, 2008 by the Probation Association of New Jersey (Case-Related Professional Unit). The Judiciary claims that it is entitled to an order dismissing the charge based on an agreement between the Judiciary and PANJ settling a dispute between the parties over an alleged "sick out" by 20 probation officers, a subsequent disciplinary investigation, and resulting sanctions. PANJ opposes the Judiciary's motion. Because we find a dispute over material facts relating to the

sick out sanctions, we deny the motion for summary judgment and remand this case for hearing. In so doing, we do not preclude the Judiciary from attempting to establish that PANJ agreed not to file an unfair practice charge over the employer's response to the alleged "sick out."

PANJ's charge alleges that the Judiciary and its Camden Vicinage violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1), (2), (3), (4) and (5),^{1/} by conspiring to carry out a campaign of retaliation against PANJ, its members and representatives in connection with interrogations conducted by members of an outside law firm in October 2007, and through the issuance of written disciplinary warnings to employees in November stemming from an alleged September 14 "sick-out."

^{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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this 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."

On November 26, 2008, a Complaint and Notice of Hearing issued. On December 8, the Judiciary/Vicinage filed an Answer denying it violated the Act and listing affirmative defenses.

On June 1, 2009, the Judiciary/Vicinage filed a motion for summary judgment, a brief, certifications and exhibits. On August 13, PANJ filed a brief, certifications and exhibits. After seeking leave and obtaining PANJ's consent, the Judiciary/Vicinage filed a reply brief on September 14.

Based on the certifications and exhibits, these facts are undisputed.

On September 14, 2007, approximately 20 probation officers assigned to the Camden County Vicinage reported out sick. This date coincided with a one-day suspension served by another probation officer for refusing to comply with a directive that had been adopted in 2006. Prior to September 14, PANJ officials advised probation officers to report to work on that date. Members of the Vicinage's human resources staff contacted the 20 employees and directed that they produce doctor's notes on their return to work. None did so when they returned, but subsequently four submitted notes.

The Vicinage engaged an outside law firm to interview the 20 employees on October 2 and 18, 2007. After the interviews were carried out, officials and representatives from the Judiciary, the Vicinage and PANJ met and engaged in oral and written

discussions to lessen the tension that had resulted from these events. On November 12, after the parties had exchanged comments over earlier drafts, a letter was sent by PANJ President George Christie to Michael O'Brien, Trial Court Administrator for the Vicinage. It reads:

I am the President of the Probation Association of New Jersey which is the representative of all Probation Officers employed by the Judiciary including those who work in the Camden Vicinage.

PANJ does not support or encourage directly or indirectly any sort of illegal sick outs during working hours, or for that matter, any other illegal strikes, work stoppages or work slowdowns.

In this regard, PANJ confirms that under Article 13 of the agreement between it and the Judiciary, subparagraph 13.I states as follows:

"The employees and the Union agree not to institute or engage in or support any strike, work stoppage, slowdown or other similar action by employees covered by this agreement."

We will continue to cooperate with the Judiciary, as it will with us, to comply with all contractual and legal obligations.

Based on the certifications and exhibits, these facts are in dispute and bear on the issues raised in the motion for summary judgment:

According to O'Brien, the parties agreed that if PANJ issued a satisfactory letter to the Vicinage and its membership

expressing its disapproval of sick outs and work stoppages, the Vicinage would issue written warnings to the probation officers rather than impose discipline. In addition, PANJ would take no legal action or otherwise challenge the Vicinage's October 2007 investigation of the alleged September 2007 sick out. Also according to O'Brien, in March 2008, PANJ's attorney explained that despite PANJ's prior agreement not to institute any action over the Vicinage's investigation of the sick out, he would be filing an unfair practice charge.

According to Christie, neither PANJ nor its attorney ever agreed not to take legal action to challenge the October 2007 interrogations. According to PANJ's attorney, he agrees with Christie that the unfair practice charge was not "settled" at the meeting held in October or early November 2007.

N.J.A.C. 19:14-4.8(e) sets forth the standards for granting a summary judgment motion:

If it appears from the pleadings, together with the briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and that the movant or cross-movant is entitled to its requested relief as a matter of law, the motion or cross-motion for summary judgment may be granted and the requested relief may be ordered.

Summary judgment is to be granted with extreme caution and the moving papers must be considered in the light most favorable to the respondent, with all inferences and doubts resolved against

the movant. State of New Jersey (Dept. of Human Services), P.E.R.C. No. 89-52, 14 NJPER 695 (¶19297 1988).

Summary judgment must be denied because there are material disputed facts bearing on whether PANJ agreed to give up the right to file an unfair practice charge in exchange for a maximum sanction of a written warning for the employees allegedly involved in a sick out.

The employer has cited a number of cases involving alleged settlement agreements executed after an unfair practice charge had been filed. State of New Jersey (Dept. of Community Affairs), P.E.R.C. No. 2004-81, 30 NJPER 227 (¶84 2004); Hawthorne Bor., P.E.R.C. No. 82-37, 7 NJPER 602 (¶12268 1981), recon. den. P.E.R.C. No. 82-53, 8 NJPER 24 (¶13010 1981); Union Cty., H.E. No. 82-18, 8 NJPER 2 (¶13001 1981). We agree with the employer that we have jurisdiction to enforce a settlement agreement that resolves an unfair practice. See Hamilton Tp. Bd. of Ed., P.E.R.C. No. 90-80, 16 NJPER 176 (¶21075 1990), aff'd NJPER Supp.2d 258 (¶214 App. Div. 1991) (employer engaged in unfair practice when it failed to adhere to the terms of agreement settling prior unfair practice charge). This case, however, involves an alleged agreement not to file an unfair practice charge and there are material facts in dispute over whether such an agreement was made.

ORDER

The motion for summary judgment is denied. The case is remanded for hearing.

BY ORDER OF THE COMMISSION

Commissioners Eaton, Colligan, Fuller, Krengel, Voos and Watkins voted in favor of this decision. None opposed.

ISSUED: January 28, 2010

Trenton, New Jersey