

P.E.R.C. NO. 2010-63

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WALL TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2007-055

WALL TOWNSHIP INFORMATION  
TECHNOLOGY ASSOCIATION,

SYNOPSIS

The Public Employment Relations Commission denies a motion for reconsideration of P.E.R.C. No. 2010-24, 35 NJPER 373 (¶126 2009), filed by the Wall Township Board of Education. In that decision, the Commission found that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it terminated an employee after she tried to grieve her evaluation and enlisted the Wall Township Information Technology Association's assistance to have the Board review the contents of her evaluation and to negotiate with the Board concerning the evaluation process. The Board contends that during a transition between former and present legal counsel, a hearing in this matter was waived without the Board's knowledge, participation or consent. The Board asserts that a hearing was waived by its former counsel after that counsel had been terminated by the Board. The Commission denies the motion because at the time of its decision, the Board's former counsel was the counsel of record with the apparent authority to stipulate the facts and waive a hearing examiner's report.

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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Charging Party.

Appearances:

For the Respondent, Kenney, Gross, Kovets & Parton,  
attorneys (Michael J. Gross, of counsel)

For the Charging Party, Selikoff & Cohen, attorneys  
(Steven R. Cohen and Carol H. Alling, on the brief)

DECISION

On November 13, 2009, the Wall Township Board of Education moved for reconsideration of P.E.R.C. No. 2010-24, 35 NJPER 373 (¶126 2009). In that decision, we found that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it terminated an employee after she tried to grieve her evaluation and enlisted the Wall Township Information Technology Association's assistance to have the Board review the contents of her evaluation and to negotiate with the Board concerning the evaluation process. The Board asserted that since the employee was acting on her own behalf to challenge her

evaluation, she was not engaged in protected activity. Based on a stipulated record, we found that the employee was engaged in protected activity; the employer was aware of the activity; and that she was terminated because of that activity.

A motion for reconsideration will not be granted absent extraordinary circumstances. N.J.A.C. 19:14-8.4. We deny the Board's motion.

The Board contends that during a transition between former and present legal counsel, a hearing in this matter was waived without the Board's knowledge, participation or consent. The Board asserts that a hearing was waived by its former counsel after that counsel had been terminated by the Board.

The Board's motion is supported by certifications of its President and Superintendent. The President states that the transition to its new counsel took place during March, April and May 2009. She further states that the Board was not aware that its former counsel waived a hearing on April 7, 2009. The Superintendent states that during the week of March 23, he notified the former counsel that the Board would be changing legal counsel and that all active files needed to be transferred. He further states that the transition to the new law firm took place during March, April and May. On March 30, the Superintendent received a status report from the former counsel

indicating that they had been waiting for over a year for the Association's counsel to submit a settlement proposal; there was no merit to the case; and that this agency does not have any rush to settle these disputes as long as the employer and employee are attempting to resolve the matter. The Superintendent states that he was not aware that the former counsel was contemplating waiving a hearing.

The Association responds that the motion for reconsideration should be denied and the certifications suppressed because the filing counsel is not counsel of record. A certification of the Association's counsel attaches the minutes of the Board's April 28, 2009 reorganization meeting. Those minutes indicate that the new Board attorney was appointed on that date effective immediately. That date was three weeks after the Board's former counsel waived a hearing. The Association has also submitted a letter dated April 7, 2009 from the Board's former counsel to the Commission Hearing Examiner advising that in light of the stipulated record, the Board waives the Hearing Examiner's report and consents to direct submission to the Commission. That letter indicates that a copy was sent to the Superintendent. The Association argues that there are no extraordinary circumstances warranting reconsideration; it is only after the Board lost the case did it come forward to suggest that the former counsel did

not keep it informed of the status of the litigation. The Association states that the Board may pursue an action against its former counsel, but that its suggestion of malpractice does not establish an extraordinary circumstance warranting reconsideration; nor does the Board's failure to keep the parties and the tribunal informed as to any change in counsel establish an extraordinary circumstance or entitle the Board to a new hearing with a new lawyer.

We deny the motion because at the time of our decision, the Board's former counsel was the counsel of record with the apparent authority to stipulate the facts and waive a hearing examiner's report. Although the Superintendent has certified that he was not made aware that the former counsel was recommending, had been asked, or was otherwise contemplating waiving the hearing or hearing examiner's report, the Superintendent was copied with a letter from the Board's former counsel to the Hearing Examiner in which the former counsel waives the Hearing Examiner's report and consents to direct submission to the Commission. That letter was dated April 7, 2009, three weeks before the April 28, 2009 vote by the Board to appoint a new law firm. Under these circumstances, the Board must direct any complaint it may have toward its former law firm.

The case before this agency has already been decided and there are no extraordinary circumstances that warrant reconsidering that fact.

ORDER

The motion for reconsideration is denied.

BY ORDER OF THE COMMISSION

Commissioners Colligan, Eaton, Fuller, Krengel and Voos voted in favor of this decision. None opposed. Commissioner Watkins was not present.

ISSUED: March 25, 2010

Trenton, New Jersey