

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
AND
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MONMOUTH,

Respondent,

-and-

PBA LOCALS 314 & 240,

Charging Parties.

Docket Nos. CO-2009-282
CO-2009-288
(Consolidated)

COUNTY OF MONMOUTH,

Respondent,

-and-

PAUL LABELLA, JOHN KOLODZIEJ,
BYRON C. JONES, WILLIAM GIERSBACH,
MARK BRAWLEY, AUGUSTIN ALVARADO et al.,
LEILA DEVITO et al.,

Appellants.

OAL Docket Nos.
CSVYD 04685-2009S
CSVYD 04686-2009S
CSVYD 04687-2009S
CSVYD 04688-2009S
CSVYD 04689-2009S
CSVYL 08381-2009S
CSVYL 10086-2009S

Agency Docket Nos. 2009-3854
2009-3855
2009-3852
2009-3851
2009-3853
2009-4082
2009-4080

SYNOPSIS

The Civil Service Commission and the Commission designee of the New Jersey Public Employment Relations Commission issue a Joint Order consolidating appeals before Civil Service with unfair practice charges before PERC for hearing before an Administrative Law Judge. The appeals and the charges challenge a layoff of Monmouth County employees. After the ALJ issues a decision to both agencies, PERC will determine whether hostility to protected activity was a substantial or motivating factor in the decision to layoff the PBA-represented employees; whether the County refused to negotiate in good faith with the PBA locals;

and whether the County dominated or interfered with the formation, existence or administration of PBA Local 314. The Civil Service Commission will then determine whether the layoff was for legitimate business reasons and otherwise warranted under Civil Service law. If appropriate, the matter will then be returned to PERC for consideration of whether specialized relief is warranted under its Act.

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 the County Counsel (Steven Kleinman, Special County Counsel)

For the Charging Party PBA Local 314, Mets, Schiro & McGovern, attorneys (James M. Mets, of counsel)

For the Charging Party PBA Local 240, Zazzali, Fagella, Nowak, Kleinbaum & Friedman, attorneys (Robert A. Fagella, of counsel)

For Appellants LaBella, Kolodziej, Jones, Giersbach, and Brawley, Fredson & Stratmore, LLC (Ciro A. Spina, of counsel)

For Appellants Alvarado et al. and DeVito et al., Mets, Schiro & McGovern, attorneys (Leonard C. Schiro, of counsel)

Appellants Massol, Dreyer, Statesir, Wenmert, Vizzi and Smith-Ash, pro se.

DECISION

On February 11, 2009, PBA Local 314 filed an unfair practice charge against the County of Monmouth. On February 13, PBA Local 240 filed an unfair practice charge against the County. PBA Local 314 represents Sheriff's Officers. PBA Local 240 represents County Correction Officers. The charges allege that the County violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4a(1), (3) and (5) ^{1/} when the County demanded that PBA unit members accept a wage freeze for 2009 or face immediate layoffs. PBA Local 314's charge also alleges a

^{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 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."

violation of N.J.S.A. 34:13A-5.4a(2).^{2/} On October 1, the Director of Unfair Practices issued a Complaint and an Order Consolidating the cases for hearing.

Good faith layoff appeals were filed by individual employees of the County with the Civil Service Commission, which included members of PBA Local 314's negotiations unit. Neither PBA Local 240 nor any Local 240 unit members have filed appeals with Civil Service. The Civil Service appeals were transferred to the Office of Administrative Law for hearing in a series of filings in 2009.

In January 2010, the County filed a motion to consolidate the Civil Service appeals and to consolidate the Civil Service appeals with the unfair practice cases pending before PERC. The appellants did not oppose consolidation of the Civil Service appeals. The PBA Locals opposed consolidation of the unfair practice cases with the Civil Service appeals.

On April 14, 2010, Administrative Law Judge Patricia M. Kerins issued an Initial Decision finding that the PERC and the Civil Service Commission cases should be consolidated and that the Civil Service Commission has the predominant interest. She

^{2/} This provision prohibits public employers, their representatives or agents from: "(2) Dominating or interfering with the formation, existence or administration of any employee organization."

found that if a finding of good faith is made by Civil Service, the unfair practice allegations would be moot.

On April 26, 2010, PBA Local 240 filed exceptions to the ALJ's Initial Decision asserting that consolidation is inappropriate because the identity of parties was not similar since no member of Local 240 had a Civil Service appeal pending; PERC should sever PBA Local 240's charge from PBA Local 314's charge; and if the motion to consolidate is granted, PERC has the predominant interest. The County filed a response urging adoption of the ALJ's initial decision.

We agree with PBA Local 240 that it does not have identity of parties since neither it nor any of its unit members have filed Civil Service appeals. However, we find that Local 240's unfair practice charge was appropriately consolidated with Local 314's charge by the Director. It is also appropriate for the Civil Service appeals of Local 314's members to be consolidated with the unfair practice case. Thus, Local 240's unfair practice case must be heard by an ALJ with the other cases related to the layoff. We have modified the ALJ's initial decision to ensure that PERC has the initial review of the issues within its unfair practice jurisdiction.

Having independently evaluated the record, the exceptions, the County's response and considered the ALJ's Order, the Civil Service Commission at its meeting on May 12, 2010 and the

Commission designee of the Public Employment Relations Commission, acting pursuant to authority delegated to her by the full Commission, on May 6, 2010 made the following determination in this matter.

JOINT ORDER

The PERC unfair practice charges are consolidated for hearing with the Civil Service appeals before an Administrative Law Judge. The Administrative Law Judge will first offer recommended findings of fact and conclusions of law to both the Public Employment Relations Commission and the Civil Service Commission disposing of all issues in controversy through a single initial decision under N.J.S.A. 1:1-18.3 and consistent with N.J.A.C. 1:1-17.8(a); and

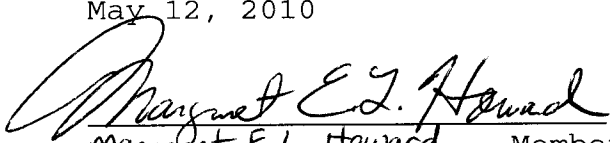
Upon transmittal of the initial decision to both agencies, the underlying record will be forwarded to PERC to determine whether hostility to protected activity was a substantial or motivating factor in the decision to lay off the PBA-represented employees; whether the County refused to negotiate in good faith with the PBA Locals; and whether the County dominated or interfered with the formation, existence or administration of PBA Local 314; and

The PERC decision and the complete record will then be sent to the Civil Service Commission which will then determine whether

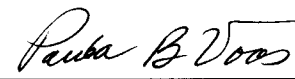
the layoff was for legitimate business reasons and was otherwise warranted under Civil Service law; and

Where appropriate, the matter will be returned to PERC for its consideration of whether specialized relief is warranted under its Act.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
May 12, 2010


Margaret E.L. Howard, Member
Civil Service Commission

DECISION RENDERED BY THE PUBLIC
EMPLOYMENT RELATIONS COMMISSION
DESIGNEE ON May 6, 2010


Paula B. Voos, Commission Designee
Public Employment Relations
Commission