

P.E.R.C. NO. 2012-62

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MORRIS,

Respondent,

-and-

Docket No. CO-2011-027

MORRIS COUNCIL No. 6, NJCSA
IFPTE, AFL-CIO

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies the Township of Morris' motion for summary judgment in an unfair practice case filed by Morris Council No. 6, NJCSA IFPTE, AFL-CIO. The charge alleges the Township violated the Act when it laid off a union official in retaliation for protected activity and retained an employee with less seniority. The Commission holds that material facts are in dispute and denies summary judgment.

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, Knapp, Trimboli & Prusinowski, LLC
(Frederic M. Knapp, of counsel)

For the Charging Party, Fox and Fox, LLP (Jessica S.
Swenson, of counsel)

DECISION

On July 15, 2011, the Township of Morris moved for summary judgment seeking dismissal of a July 15, 2010 unfair practice charge filed by Morris Council No. 6, NJCSA, IFPTE, AFL-CIO. The Township's motion was supported by a certification of counsel and accompanying documents. Council 6 opposes the Township's motion and has filed a brief and certification of former employee, David Peck. We deny summary judgment.

Council 6 is the majority representative for all non-supervisory white-collar employees employed by the Township. We take administrative notice that Council 6 was certified as the unit majority representative on January 6, 2009. David Peck is a

member of the negotiations committee for Council 6. He participated in all negotiations sessions on behalf of Council 6 for the parties' first collective negotiations agreement.^{1/} Peck was employed by the Township from April 23, 2001 until he was laid off on July 10, 2010.^{2/} His most recent position was as a building inspector in the Construction Department. He previously worked in the Engineering Department as a project manager. Peck also served as a building subcode official and a construction code official for five years in another municipality. He holds an ICS and RCS Building Inspector License and is a licensed building subcode official and construction code official.

On July 16, 2010, Council 6 filed an unfair practice charge alleging the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1) and (3), and (5)^{3/}, by laying off Peck and Karen Swetz^{4/} in

1/ The parties held five negotiations sessions until an impasse was declared and the parties entered mediation which was stayed when a de-certification petition was filed. The de-certification petition was not successful and Council 6 was re-certified on April 12, 2010.

2/ The Township laid off 17 employees to address a \$3.25 million budget gap.

3/ 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

(continued...)

retaliation for their activities on behalf of Council 6.

Specifically, as to Peck, the charge alleges that the Township committed to Council 6 that layoffs would be based on objective criteria that combine seniority and qualifications; Peck has more seniority and qualifications than other employees in the same unit who were retained by the Township; and Thomas Wiebe, who has less seniority and qualifications than Peck, remains employed by the Township and does not hold a position within Council 6. The charge further alleges that the Township failed and/or refused to negotiate with Council 6 in regard to its request to negotiate regarding the layoff. A Complaint and Notice of Hearing issued on March 22, 2011.

The Township moves for summary judgment alleging that there is no nexus between any of the facts alleged by the charging party and any alleged discriminatory animus towards Peck. It asserts that Peck was selected for layoff over Wiebe because Wiebe has a Class 1 Building Inspector (HHS) license and Peck only has a Class 2 Building Inspector (ICS) license and that while neither is the Township's construction code official - if

3/ (...continued)
guaranteed to them by this act. . . . [and] (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."

4/ Council 6 has withdrawn its allegations as to Karen Swetz.

one of them had to replace the code official - it could cost the Township its Class 1 (HHS) status if Peck were selected. The Township also moves for dismissal asserting that the Township is not required to negotiate over its layoff decision.

Council 6 opposes summary judgment. Its response disputes the Township's statement of facts. Peck asserts in his certification: that Wiebe has less seniority and qualifications; Wiebe has only served as a building inspector and does not retain any additional licenses or qualifications that would place him above Peck; Peck trained Wiebe for the position of building inspector and holds a class 1 HHS license; the only license required for the building inspector title is RCS; there are only two structures in the Township that are considered Class 1 status; if the Township construction code official did not have a Class 1 license, the State would move it to a temporary Class 2 status to allow the construction code official to receive a Class 1 HHS license; and the timing of Peck's selection for layoff coincides with his activity on the negotiations team.

The Township replies^{5/} that Wiebe has substantial construction and building experience; Peck did not pass the exam to obtain his HHS Inspector license (Class 1); the Township does

5/ The Township sought leave to file a reply and Council 6 consented. With its reply brief, the Township submits the certification of Albert Mastrobattista, Construction Code Official.

not have two Class 1 buildings, but has 50 of them; the Township would lose revenue if the State assisted with plan reviews; and there is no evidence of anti-union animus towards Peck.

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 can not be granted as there is a material factual dispute over the reason for Peck's termination. Council 6 claims that Peck was terminated for his protected activity on the negotiations team. The Township claims that Peck was selected for layoff because he was less qualified than Wiebe. There are also several facts in dispute including the license requirements for the building inspector position, whether the Township was hostile towards Peck's activity on the negotiations team, and whether there are two or 50 Class 1 buildings in the

Township. All of these factual disputes preclude summary judgment and require determination by the Hearing Examiner.

ORDER

The Township of Morris's motion for summary judgment is denied. The matter is remanded for hearing.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Krengel, Voos and Wall voted in favor of this decision. None opposed. Commissioners Bonanni and Eskilson recused themselves. Commissioner Jones was not present.

ISSUED: May 31, 2012

Trenton, New Jersey