

P.E.R.C. NO. 2013-17

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ESSEX,

Respondent,

-and-

Docket No. CO-2010-399

IBEW LOCAL 1158,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission grants the County of Essex's motion for summary judgment in an unfair practice case filed by IBEW Local 1158. The union did not oppose the motion.

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, James R. Paganelli, Essex County
Counsel (Kecia M. Clarke, of counsel)

For the Charging Party, Kroll Heineman, LLC, attorneys
(Curtiss T. Jameson, of counsel)

DECISION

This case comes to us by way of the County of Essex's motion for summary judgment in an unfair practice case filed by the IBEW Local 1159. The unfair practice charge alleges that the County violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:3A-1 et seq., specifically 5.4a(1) and (3), when it refused to rehire a former employee as a seasonal employee because of his union membership and involvement.^{1/}

^{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. . . and (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...)

The IBEW filed its unfair practice charge on April 23, 2010. On August 5, 2011, a Complaint and Notice of Hearing issued. On August 29, the County filed its Answer denying the material allegations in the charge. On October 24, the County filed a motion for summary judgment, which was unopposed by the IBEW.

The County asserts that the following are the material facts relevant to this dispute. On July 9, 2008, the subject employee was involved in an altercation during working hours on County property with another employee who he violently attacked. An investigation determined that the subject employee initiated the altercation. During the investigation, the County became aware that he had also falsified his employment application by failing to disclose numerous arrests and convictions. The County recommended his termination. Following a disciplinary hearing and subsequent appeal, the parties settled the matter and the subject employee was suspended for 25 days without pay for falsifying County records and exhibiting conduct unbecoming of a County employee. In February 2009, he was laid off along with numerous other employees as part of a County-wide layoff. In April 2010, the County declined to rehire him as a seasonal worker due to his prior disciplinary record.

1/ (...continued)
guaranteed to them by this act. . . .

Summary judgment will be granted if there are no material facts in dispute and the movant is entitled to relief as a matter of law. Brill v. Guardian Life Ins. Co. Of America, 142 N.J. 520, 540 (1995); Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 73-75 (1954).

Since the County's motion is unopposed, there are no material facts in dispute. Aside from the unfair practice charge, the record does not contain a scintilla of evidence of a violation of N.J.S.A. 34:13A-5.4a (1) or (3). The County's motion is granted.

ORDER

The County of Essex's motion for summary judgment is granted and the complaint is dismissed.

BY ORDER OF THE COMMISSION

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

ISSUED: September 27, 2012

Trenton, New Jersey