P.E.R.C. NO. 2014-63

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OPERATED SCHOOL DISTRICT
OF THE CITY OF NEWARK,

Respondent,

-and-

Docket No. CO-2011-220

NEWARK TEACHERS UNION, LOCAL 481,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies the Newark State-Operated School District's request for special permission to appeal a hearing examiner's decision denying its motion for summary judgment in an unfair practice case filed by the Newark Teachers Union, Local 481. The hearing examiner found that there was a material factual dispute because the District claims that layoffs were instituted for economic reasons while the union claims that the layoffs were instituted based on anti-union animus. The Commission disagrees with the District's assertion that the Civil Service Commission's approval of the layoff plan is entitled to a presumption of good faith that equates to a finding that the union has not satisfied the Bridgewater standard for anti-union animus in violation of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

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, Scarinci Hollenbeck (Ramon E. Rivera, of counsel)

For the Charging Party, Zazzali, Fagella, Nowak, Kleinbaum & Freidman (Colin M. Lynch, of counsel)

DECISION

On November 24, 2013, the State Operated School District of the City of Newark filed special permission to appeal a hearing examiner's decision denying its motion for summary judgment. On December 5, 2013, the Newark Teachers Union, Local 481 filed a brief in opposition to the appeal.

At issue in this case is the District's motivation for laying off 143 employees. The Hearing Examiner denied the District's motion for summary judgment, finding that there was a material factual dispute since the District claims that the layoffs were instituted for economic reasons and the union claims that the layoffs were instituted for anti-union animus.

The District argues on special permission to appeal that because the layoff was approved by the Civil Service Commission, it is afforded a presumption of good faith. The union responds that the District inappropriately conflates the applicable legal standard for challenging the "good faith" of the layoff action before the Civil Service Commission with the standard for appealing the layoff before this Commission based on anti-union animus in violation of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

In establishing the District's motive for the layoff, the Hearing Examiner will determine whether the union has proved, by a preponderance of the evidence on the entire record, that protected conduct was a substantial or motivating factor in the layoff, the District knew of this activity and was hostile toward the exercise of the activity. In re Tp. of Bridgewater, 95 N.J. 235, 246 (1984). However, even if those grounds are established, the District will not have violated the Act if it can prove, by a preponderance of the evidence on the entire record, that the adverse action would have taken place absent the protected conduct. Id. at 242. Conflicting proofs concerning the District's motives are for the Hearing Examiner to resolve.

Absent extraordinary circumstances not present here, we will not intrude into these proceedings mid-hearing. We disagree with the District's assertion that the Civil Service Commission's

approval of its layoff plan equates to a finding that the Bridgewater standard has not been satisfied. There is no evidence in the record that a good faith appeal was actually filed with the Civil Service Commission by the employees affected by the layoff and the mere presumption of good faith for the layoff that is asserted by the District does not result in a finding that the Bridgewater standard has not been satisfied.

ORDER

The request for special permission to appeal is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones, Voos and Wall voted in favor of this decision. None opposed.

ISSUED: March 27, 2014

Trenton, New Jersey