

P.E.R.C. NO. 2015-13

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TOWN OF WESTFIELD,

Respondent,

-and-

Docket No. CI-2012-046

BARRON CHAMBLISS,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission grants one of Barron Chambliss' exceptions to a Hearing Examiner's report and recommended decision in an unfair practice case filed by Chambliss against the Town of Westfield. The Commission holds that the Hearing Examiner mistakenly found that an alleged conversation at the center of Chambliss' N.J.S.A. 34:13A-5.4a(1) charge occurred more than six months prior to the filing of the unfair practice charge, which led to the erroneous conclusion that the charge was untimely. The Commission finds that is not necessary at this time to review Chambliss' other exceptions, and remands to the Hearing Examiner for reconsideration of her findings of fact and conclusions of law.

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, Appruzzese, McDermott, Mastro and
Murphy (Robert J. Merryman, of counsel)

For the Charging Party, Mets, Schiro and McGovern, LLP
(Peter Paris, of counsel)

DECISION

This case comes to us by way of exceptions to a Hearing Examiner's report and recommended decision. On May 21, 2012, an unfair practice charge was filed by Barron Chambliss against the Town of Westfield. The charge was amended on August 10, 2012. As amended, the charge alleges that the Town violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically N.J.S.A. 34:13A-5.4(a) (1) and (3). On September 27, 2012, the Director of Unfair Practices issued a Complaint and Notice of Hearing only as to the charge alleging a violation of subsection a(1). The Director refused to issue a Complaint regarding the subsection a(3) allegations. Specifically, the a(1) Complaint focuses upon a conversation engaged in by the then Chief of Police, wherein he was allegedly

overheard discussing removing Chambliss from the Detective Bureau and reassigning him to Patrol.

On November 6, 2012, the Town filed its answer and affirmative defenses. On October 10, 2013, the Town filed a motion for summary judgment, which was denied on November 12, 2013. The Town's request for special permission to appeal was denied on December 2, 2013. A Hearing Examiner of the Commission conducted hearings on April 9 and 10, 2014. On June 2, 2014, the parties submitted post-hearing briefs. On June 9, 2014, the Hearing Examiner issued her report and recommended decision. H.E. No 2014-15, 41 NJPER 15 (¶4 2014). She found that the charge regarding the January 6, 2012 conversation was untimely, and that even if it were timely, the allegation should be dismissed because the conversation never occurred. On June 17, 2014, the Charging party filed exceptions and on June 23, the Town filed a response.

We adopt and incorporate the findings of fact as found by the Hearing Examiner, except as noted infra. H.E. at 5-18.^{1/} The Charging Party first takes exception to the Hearing Examiner's finding that his claim regarding the conversation which is at the center of this case was untimely because the conversation occurred on January 6, 2010 and the unfair practice

^{1/} We note that where the findings of fact also include conclusions of law, we do not adopt the conclusions of law.

charge was not filed until May 21, 2012, more than six months from that date. We grant this exception. While the Hearing Examiner mistakenly found that the alleged conversation took place on January 6, 2010, the record is replete with both witness testimony and evidence that it actually occurred on January 6, 2012, and therefore, the May 21, 2012 unfair practice charge was timely. Due to this significant mistake of fact, and the erroneous conclusion that the charge was untimely, it is not at this time necessary to review and decide Charging Party's second through fifth exceptions. This matter will be remanded to the Hearing Examiner for reconsideration of her findings of facts and conclusions of law.

ORDER

This matter is remanded to the Hearing Examiner with instructions to review and revise her factual findings as necessary, and to revise the recommended conclusions of law as appropriate with any modifications to the findings of fact.

BY ORDER OF THE COMMISSION

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

ISSUED: September 18, 2014

Trenton, New Jersey