

P.E.R.C. NO. 2016-2

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JAMES A. BRIDGE,

Petitioner/Charging Party,

-and-

OAL Dkt. Nos. EDU 14001-13

EDU 16637-13

Agency Dkt. Nos. 215-9/13

215-10/13

PERC Dkt. Nos. CI-2013-059

NORTH WARREN REGIONAL SCHOOL

CI-2013-060

DISTRICT BOARD OF EDUCATION,

CI-2013-061

Respondent/Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the North Warren Regional School District Board of Education's for special permission to appeal a hearing examiner/Special Administrative Law Judge's (ALJ) denial of its motion to dismiss the Charging Party's alleged N.J.S.A. 34:13A-5.4a(1) violation which is the subject of Docket No. CI-2013-060 in this consolidated matter. Finding that the evidence relied on by the ALJ supports the Charging Party's prima facie charge, the Commission declines to intrude into the proceedings mid-hearing before the ALJ has weighed the parties' conflicting proofs concerning the Board's legitimate business justification for its actions versus the tendency of its actions to interfere with the Charging Party's rights under the 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 Petitioner/Charging Party, James A. Bridge,  
pro se

For the Respondent/Respondent, Fogarty & Hara,  
attorneys (Stephen R. Fogarty, of counsel)

DECISION

This case comes to us by way of a June 30, 2015 request by the North Warren Regional School District Board of Education (Board) for special permission to appeal part of a Special Administrative Law Judge's (ALJ) decision on the Board's motion to dismiss a consolidated Public Employment Relations Commission (PERC) and Commissioner of Education (DOE) case. On June 14, 2013, James A. Bridge filed three unfair practice charges with PERC against the Board. On August 26, 2013 and October 15, 2013, Bridge filed petitions with the DOE asserting similar allegations to those set forth in the unfair practice charges. On November

18, 2013, the DOE petitions were consolidated and transferred to the Office of Administrative Law (OAL). On January 30, 2014, PERC's Director of Unfair Practices consolidated the unfair practice charges and issued a Complaint. Pursuant to a March 20, 2014 Order of the OAL, ALJ Irene Jones consolidated Bridge's PERC charges and DOE petitions and determined that PERC has the predominant interest. Pursuant to an April 14, 2014 Joint Order of the PERC Chair and the Commissioner of Education [P.E.R.C. No. 2014-68, 40 NJPER 502 (¶161 2014)], the matters were consolidated before PERC Hearing Examiner Wendy L. Young as a Special ALJ pursuant to N.J.S.A. 52:14F-6(b).

Following two days of hearing on February 25 and 26, 2015, and the conclusion of Bridge's case-in-chief, the Board moved to dismiss on the record. On June 25, ALJ Young recommended dismissal of both of Bridge's DOE petitions (Docket Nos.: EDU 14001-2013N, Agency Dkt. No. 215-9/13; and EDU 16637-2013N, Agency Dkt. No. 257-10/13) and two of his three PERC charges (Docket Nos.: CI-2013-059; CI-2013-061).

The remaining unfair practice charge which ALJ Young declined to dismiss (CI-2013-060) alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1)<sup>1/</sup>, when it initiated an affirmative

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<sup>1/</sup> This provision prohibits public employers, their representatives or agents from: "(1) Interfering with,  
(continued...)

action investigation against him (which concluded with the withholding of his 2013-14 salary increment) based on language used in an email composed by another teacher which he redistributed at an Association meeting.

In denying the Board's motion to dismiss the charge, the ALJ found that the Board submitted its position statement on the charge as its Answer to the Complaint, and that the position statement/Answer contained several admissions regarding the Board's filing and sustaining of an affirmative action complaint in response to Bridge's distribution of the email at the Association meeting.<sup>2/</sup> The ALJ reasoned:

Accordingly, the facts presented by Charging Party together with the admissions of the Board are sufficient to establish a prima facie case, namely that the action taken by the Board to withhold his increment had a tendency to interfere with Bridge's protected activity, namely his right to address the membership at an Association meeting and present the qualifications or lack thereof of the individual challenging his presidency. This right is protected by 5.3 of our Act. Based on the foregoing, I recommend that Respondent's motion to dismiss an unfair practice charge under CI-2013-060 be denied.

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1/ (...continued)  
restraining or coercing employees in the exercise of the rights guaranteed to them by this act."

2/ Pursuant to N.J.A.C. 19:14-3.1, "The answer shall specifically admit, deny or explain each of the allegations set forth in the complaint...[A]ny allegation not specifically denied or explained shall be deemed to be admitted to be true..."

[ALJ Report at pp. 36-37]

The Board argues that ALJ Young incorrectly relied upon the Board's statement of position to find that the record included a prima facie case of wrongful conduct, and asserts that Bridge must introduce evidence into the record to satisfy his burden of proof.<sup>3/</sup>

Bridge's June 14, 2013 charge provides a clear and concise statement of the facts constituting the alleged violations of a(1), and the Board's August 14 statement of position (converted to an Answer by letter of January 30, 2014) admits that the affirmative action investigation which concluded with an increment withholding was initiated in response to Bridge's distribution of an email at an Association meeting. We therefore decline to grant special permission to appeal the ALJ's refusal to dismiss this charge.

In establishing whether the Board's affirmative action investigation and resulting increment withholding violated 5.4a(1), the ALJ must first determine whether the actions tend to interfere with Bridge's rights under the Act. Fairview Free Public Library, P.E.R.C. No. 99-47, 25 NJPER 20 (¶30007 1998). If the answer is yes, the ALJ must then determine whether the

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<sup>3/</sup> Bridge did not file a response to the Board's request for special permission to appeal. As his July 20, 2015 request for an extension to file a response was submitted twelve days after a response would have been due, we denied the request via letter on July 21. N.J.A.C. 19:14-4.6(b).

employer has a legitimate operational justification and weigh the tendency of the employer's conduct to interfere with employee rights against the employer's need to act. Id. at 21.

Conflicting proofs concerning the Board's legitimate business justifications versus the tendency to interfere with Bridge's rights are for the Hearing Examiner/ALJ to resolve.

Absent extraordinary circumstances not present here, we will not intrude into these proceedings mid-hearing and review a Hearing Examiner's or ALJ's interlocutory ruling. At the conclusion of the hearing, any party may file exceptions to the ALJ's recommendations and we will consider the case as a whole.<sup>4/</sup>

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: August 13, 2015

Trenton, New Jersey

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<sup>4/</sup> N.J.A.C. 19:14-4.6(a): "...Unless expressly authorized by these rules, rulings by the hearing examiner on motions and objections shall not be appealed to the Commission except by special permission of the Commission, but shall be considered by the Commission in reviewing the record, if exception to the ruling or order is included in the statement of exceptions filed with the Commission, pursuant to N.J.A.C. 19:14-7.3 (Exceptions; cross-exceptions; briefs; answering briefs)."