

P.E.R.C. NO. 2016-79

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF HOBOKEN,

Respondent,

-and-

Docket No. CO-2015-064

INTERNATIONAL ASSOCIATION OF  
FIREFIGHTERS LOCAL 1076,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission adopts the Hearing Examiner's report and recommended decision dismissing a complaint alleging that the City violated N.J.S.A. 34:13A-5.4(a) (1) and (2) by investigating a fire captain's complaint that he had been subjected to a hostile work environment and physically threatened by two other captains during two union meetings. The Commission finds that the City had a substantial and legitimate business justification to investigate the captain's complaint and to direct captains who had attended the meetings to submit a report indicating whether they heard anyone physically threaten another captain during the meetings. The Commission also finds that the City had a legal obligation to investigate the complaint and narrowly tailored its inquiry, seeking only seeking information regarding the exchanges by the fire captains at two union meetings. The Commission also agrees with the Hearing Examiner that a nexus existed between the alleged misconduct and the workplace given the paramilitary structure of the fire department and the special need to maintain order and discipline.

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 Weiner Lesniak, attorneys (Steven  
Nevolis, of counsel)

For the Charging Party, Cohen, Leder Montalbano &  
Grossman, LLC, attorneys (Bruce D. Leder, of counsel)

DECISION

This case comes to us by way of exceptions to a Hearing Examiner's report and recommended decision. H.E. 2016-15, 42 NJPER 421 (¶115 2016). On September 22, 2014, the International Association of Firefighters Local 1076 (IAFF) filed an unfair practice charge against the City of Hoboken (City), alleging that the City violated subsections 5.4a(1) and (2)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (the

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<sup>1/</sup> 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 (2) Dominating or interfering with the formation, existence or administration of any employee organization."

Act) when, in the course of investigating a complaint, it ordered IAFF members to submit written reports about alleged threats made against a fire captain by other fire captains during two union meetings.

On March 31, 2015, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On April 13, the City filed an Answer, denying having violated the Act and raising several affirmative defenses.

On September 18, 2015, the parties' attorneys submitted an executed "Joint Stipulation of Facts and Exhibits" after having advised the Hearing Examiner that they wished to waive an evidentiary hearing. N.J.A.C. 19:14-6.7. The City and the IAFF filed briefs on September 16 and September 30, respectively. On October 9, the City filed a reply brief.

On January 22, 2016, the Hearing Examiner issued a report and recommended decision. We adopt and incorporate into this decision the stipulated facts, as well as the additional findings of fact made by the Hearing Examiner. H.E. 2016-15, 3-9.

The Hearing Examiner found that the City did not violate the Act when it required written reports from IAFF members as to what had transpired between the fire captains. She found that although the City's investigation interfered with union members' rights under the Act, the City had a legitimate and substantial interest to conduct the investigation which outweighed the

members' interests. The Hearing Examiner found that the City's rules and regulations hold firefighters accountable for their conduct both on and off duty, prohibit disorderly conduct and abusive or threatening language, and require the investigation of allegations of misconduct. She also found a nexus between the alleged misconduct and the workplace since the fire department is a paramilitary organization whose firefighters engage in work that is inherently dangerous and necessitates mutual trust and cooperation.

IAFF filed exceptions on February 11, 2016. On February 25, the City filed a response in support of the Hearing Examiner's report and recommended decision. We adopt the report and recommended decision and dismiss the complaint for the reasons that follow.

N.J.S.A. 34:13A-5.4a(1) prohibits employers from "interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by [the Act]." The standard for evaluating 5.4a(1) charges are as follows:

It shall be an unfair practice for an employer to engage in activities which, regardless of the absence of direct proof of anti-union bias, tends to interfere with, restrain or to coerce an employee in the exercise of rights guaranteed by the Act, provided the actions taken lack a legitimate and substantial business justification.

[New Jersey Sports and Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979).]

N.J.S.A. 34:13A-5.4a(2) prohibits "pervasive employer control or manipulation of the employee organization itself . . ." North Brunswick Twp. Bd. of Ed., P.E.R.C. No 80-122, 6 NJPER 193, 194 (¶11095 1980).

IAFF first asserts that the exchanges between the fire captains were internal union matters that did not implicate non-union persons or circumstances, and therefore, the City lacked a substantial business justification for conducting the investigation. We disagree. This matter ceased being an internal union matter at the point that a complaint was filed alleging that a fire captain was subject to a hostile work environment, harassed and physically threatened by the other fire captains. As found by the Hearing Examiner, the City had a legal obligation to investigate the complaint or subject itself to violating both its own rules and regulations and anti-discrimination laws. The fire department's rules and regulations apply equally to conduct on and off duty and prohibit firefighters from engaging in altercations and indecent conduct. Finally, the City's investigation was narrowly tailored and only sought information regarding the exchanges by the fire captains at two union meetings. There is no allegation that the City sought any information related to other union business discussed at the meetings.

We agree with the Hearing Examiner that a nexus exists between the alleged misconduct and the workplace given the paramilitary structure of the fire department and the special need to maintain order and discipline because the work is inherently dangerous and requires mutual trust and cooperation. We further note that the City's legitimate business justification is amplified by the fact that the alleged misconduct was on the part of fire captains, which are supervisory positions entrusted with setting the standard for proper conduct for rank and file firefighters. Moreover, any potential issues with fire captains having the ability to work together is of paramount concern since those issues could also trickle down to rank and file firefighters and have widespread effect.

IAFF further asserts that Hillsborough Tp., P.E.R.C. No. 2000-82, 26 NJPER 207 (¶31085 2000), rev'd 27 NJPER 266 (¶32095 App. Div. 2001) and City of Bridgeton, P.E.R.C. No. 2011-4, 36 NJPER 299 (¶113 2010), two cases relied on by the Hearing Examiner, are inapposite to the facts herein. We find these cases to be applicable to the facts in this matter.

In Hillsborough Tp., a PBA President drafted a letter to a neighboring police union at the behest of the membership. The letter addressed a situation wherein a police officer's mother had been given a ticket and implied that families of police officers should be given preferential treatment. The Township's

internal affairs investigation into the matter was found not to have violated the Act because the City had substantial business reasons for the investigation.

In City of Bridgeton, the Commission accepted an Administrative Law Judge's Initial Decision which found that the City did not violate the Act when it disciplined a PBA President for his refusal to provide the sources of allegations in a grievance that improprieties existed in the internal affairs bureau. In both cases, like here, the matters stopped being internal union matters once action was taken which brought the matter into the public domain. Here, it was the filing of a complaint, in Hillsborough Tp. it was the sending of the letter to the neighboring police union, and in City of Bridgeton it was the filing of a grievance.

IAFF also asserts that because the fire captain did not specifically allege that he was a member of a protected class, the Hearing Examiner erred in finding that the City had a basis to investigate the complaint under the anti-discrimination laws. In his complaint, the fire captain stated that he was subject to a "hostile work environment", "harassed" and "threatened. . . with physical harm" by other fire captains. Given the language used in the complaint and that the investigation was in its infancy, it was reasonable for the City to believe that the fire captain was potentially alleging a violation of anti-

discrimination laws, N.J.S.A. 10:5-12 et seq. Nevertheless, there was an independent basis for the City to conduct the investigation based on potential violations of its own rules and regulations.

Finally, IAFF asserts that the City should have referred the investigation to law enforcement rather than conduct an internal investigation. However, IAFF fails to provide any legal support as to why the City should have been precluded from conducting an internal investigation, even if it had also referred the investigation to law enforcement to determine whether there was a basis for a criminal conviction.

ORDER

The Hearing Examiner's report and recommended decision is adopted. The complaint is dismissed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau and Eskilson voted in favor of this decision. Commissioners Jones and Voos voted against this decision. Commissioner Wall was not present.

ISSUED: May 26, 2016

Trenton, New Jersey