

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF SECAUCUS,

Respondent,

-and-

Docket No. CI-H-2000-45

DAVID C. MCADAM,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Town of Secaucus for special permission to appeal the issuance of a Complaint based on an unfair practice charge filed by David C. McAdam. The Commission finds that the charging party has provided a clear and concise statement of facts constituting the alleged violations of a(1) and (3). The Commission concludes that a hearing must be held on those allegations. The Commission further finds that the charging party has withdrawn the allegations of violations of N.J.S.A. 34:13A:-5.4a(5) and (7) and that the employer may seek an order from the Hearing Examiner to that effect. Finally, the Commission finds that the employer may move for summary judgment on the alleged violation of 5.4a(4).

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.

P.E.R.C. NO. 2001-45

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Appearances:

For the Respondent, Martin R. Pachman, P.C.  
(Robin T. McMahon, on the brief)

For the Petitioner, Oxfeld Cohen, LLC  
(Arnold Shep Cohen, on the brief)

DECISION

On January 17, 2001, the Town of Secaucus requested special permission to appeal the issuance of a Complaint based on an unfair practice charge filed on June 6, 2000 by David C. McAdam. See N.J.A.C. 19:14-2.3(c). The charge alleged that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it dismissed McAdam as coordinator of the Secaucus Municipal Ice Rink and Swimming Pool and thereby reduced his salary by \$4,000. The charge alleges the dismissal was in retaliation for McAdam's having filed a grievance challenging a denial of overtime work.

On June 12, 2000, the Deputy Director of Unfair Practices notified McAdam that the charge would not be processed until he

submitted proof of service of a copy of the charge on the employer and unless he amended the charge to cite the portions of the Act alleged to have been violated.

On June 20, 2000, the charging party filed an amended charge alleging violations of 5.4a(1), (3), (4), (5) and (7).<sup>1/</sup> He also attached numerous supporting documents.

According to the employer, an exploratory conference was held and a Commission staff agent then confirmed by letter that the charging party was withdrawing the allegations of 5.4a(5) and (7) violations. On January 9, 2001, the Director of Unfair Practices issued the Complaint and Notice of Hearing on the amended charge.

The employer argues that the charge fails to contain a clear and concise statement of the facts constituting the alleged unfair practice as required by N.J.A.C. 19:14-13.(a)(3). It

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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. (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 guaranteed to them by this act. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (7) Violating any of the rules and regulations established by the commission."

further argues that the Complaint does not contain a statement of the portions of the Act alleged to have been violated as required by N.J.A.C. 19:14-2.1(a). The employer contends that without such information, it cannot prepare its defense. Finally, it argues that there are no allegations that would constitute a violation of 5.4a(4) and that a Complaint should not have issued with respect to such a claim. The employer asks for a stay of the hearing pending the outcome of this request.

On January 30, 2001, the charging party filed a response. He acknowledges that any allegations that 5.4a(5) and (7) were violated have been withdrawn. He argues that his pro se charge specifies a claim of retaliation for filing a grievance.

The charge includes an attached letter dated May 30, 2000 that provides a clear and concise statement of the facts constituting the alleged violations of a(1) and (3). We therefore decline to grant special permission to appeal. A hearing must be held on those allegations. We note that the additional attachments to the amendment are not part of the charge. Should they be relevant to the case during hearing, they may be admitted as exhibits.

The allegations of violations of N.J.S.A. 34:13A-5.4a(5) and (7) have been withdrawn. There is no basis for any further consideration of those allegations. If the employer wishes, it may ask the Hearing Examiner to issue an order to that effect. It may also move for summary judgment on the allegation concerning 5.4a(4).

ORDER

The request of the Town of Secaucus for special permission to appeal is denied.

BY ORDER OF THE COMMISSION



Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed.

DATED: February 22, 2001  
Trenton, New Jersey  
ISSUED: February 23, 2001