

P.E.R.C. NO. 96-35

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WILLINGBORO and
FOP LODGE 38,

Respondents,

-and-

Docket No. CI-95-30

WILLIAM HENDRICKS, SR.,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission sustains a decision of the Director of Unfair Practices refusing to issue a Complaint based on an unfair practice charge filed by William Hendricks, Sr. against the Township of Willingboro and FOP Lodge 38. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act by unilaterally changing its light duty policy and refusing to provide Hendricks light duty work during his disability despite a past practice of doing so. The charge further alleges that the FOP violated its duty of fair representation by failing to process any grievance on his behalf or negotiate further with the employer despite assuring him that it would do so. The Commission agrees with the Director that no allegations suggest that the Township interfered with any of the charging party's rights under the Act. The Commission also agrees with the Director that no allegations suggest that the FOP acted arbitrarily, discriminatorily or in bad faith.

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 Township, Kearns, Vassallo, Guest & Kearns, attorneys (William John Kearns, Jr., of counsel)

For the Respondent FOP Lodge 38, Frederick W. Hardt, attorneys (Frederick W. Hardt, of counsel)

For the Charging Party, Zita & Gusciora, attorneys (Dawn M. Parkinson, on the appeal)

DECISION AND ORDER

On December 12, 1994, William Hendricks, Sr. filed an unfair practice charge against his employer, the Township of Willingboro, and his majority representative, FOP Lodge 38. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (2), (3), (4), (5), (6) and (7),^{1/} by unilaterally changing its light duty policy and refusing

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with,

to provide him light duty work during his disability despite a past practice of doing so. The charge further alleges that the FOP violated its duty of fair representation and subsections 5.4(b)(1), (2), (3), (4) and (5),^{2/} by failing to process any grievance on his behalf or negotiate further with the employer despite assuring him that it would do so.

1/ Footnote Continued From Previous Page

restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (7) Violating any of the rules and regulations established by the commission."

2/ These subsections prohibit employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances. (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit. (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (5) Violating any of the rules and regulations established by the commission."

On March 13, 1995, the respondents separately denied engaging in any unfair practices. On May 2, the charging party filed an additional statement of position.

On June 19, 1995, the Director of Unfair Practices refused to issue a Complaint and dismissed the charge. D.U.P. No. 95-36, 21 NJPER 252 (¶26162 1995). Because no allegations suggest that the Township retaliated against Hendricks for exercising his protected rights or conspired with the FOP to harm him when it offered him disability retirement and reemployment as a civilian at the top of the wage scale, the Director dismissed the subsection 5.4(a)(1), (2), (3), and (4) allegations. Because no allegations suggest a violation of subsections 5.4(a)(6) or (7), he dismissed those allegations as well. Finally, the Director dismissed the subsection 5.4(a)(5) allegation, reasoning that the Township had a managerial prerogative to narrow its light duty policy and that the FOP, not Hendricks, had a right to negotiate over any unit work claims. Because no allegations suggest that the FOP breached its duty of fair representation, the Director dismissed the allegations that the FOP violated subsection 5.4(b).

On July 3, 1995, the charging party appealed the Director's determination. On July 12 and 14, respectively, the FOP and Township filed statements in opposition to the appeal.

We agree with the Director that no allegations suggest that the Township interfered with any of the charging party's rights under the Act. In particular, the Township had no duty to negotiate with the charging party, an individual employee, over changes in its light duty policy.

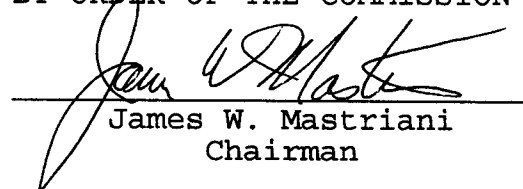
In his appeal, Hendricks disputes the FOP's claim that it fully represented his interests in negotiations with the Township. The Township apparently offered to permit Hendricks to apply for a disability retirement and to be hired as a civilian employee at the highest applicable pay rate. Hendricks apparently rejected that offer and claims that the FOP did not try to retain his position as a police officer performing records duties or light duty.

A union breaches its duty of fair representation when its representation of a unit member is arbitrary, discriminatory or in bad faith. The charging party does not dispute the contention that, as a result of the FOP's intervention, the employer offered him the opportunity to apply for disability retirement and then be reemployed as a civilian. Although he may not have been satisfied with this resolution of his dispute with the employer, we agree with the Director that no allegations suggest that the FOP acted arbitrarily, discriminatorily or in bad faith. We therefore sustain the Director's decision not to issue a Complaint on the allegation that the FOP breached the duty of fair representation.

ORDER

D.U.P. No. 95-36 is sustained.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Boose, Buchanan, Ricci and Wenzler voted in favor of this decision. Commissioner Finn abstained from consideration. Commissioner Klagholz was not present.

DATED: November 27, 1995
Trenton, New Jersey
ISSUED: November 28, 1995