

P.E.R.C. NO. 88-67

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF BLOOMFIELD,

Respondent,

-and-

MICHAEL J. FRIEL, JR.,

Charging Party,

Docket No. CI-86-75-5

and-

FRANK PROSS, ARTHUR DRURY, FRANK MAGLIONE,

Intervenors.

SYNOPSIS

The Public Employment Relations Commission denies a request by Frank Pross and Frank Maglione to reconsider its decision in Township of Bloomfield, P.E.R.C. No. 88-34, 13 NJPER __1987 appeal pending, App. Div. Dkt. No. A_____. The Commission finds that it does not have jurisdiction over the case because Pross and Maglione have filed a notice of appeal to the Appellate Division and new factual allegations contained in a motion for reconsideration will not be considered.

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Appearances:

For the Respondent, John A. Bukowski, Jr., Esq.

For the Charging Party, Oxfeld, Cohen, Blunda, Friedman,
LeVine & Brooks, Esqs. (Sanford R. Oxfeld, of counsel)

For the Intervenors, Fox and Fox (David I. Fox and Dennis
J. Alessi, of counsel)

DECISION AND ORDER

On October 23, 1987 we decided Tp. of Bloomfield, P.E.R.C. No. 88-34, 13 NJPER ____ (¶ ____ 1987), app. pending, App. Div. Dkt. No. A-1521-87T1. We held that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it did not promote Michael J. Friel to be deputy chief. We found that the Township retaliated against Friel for filing a representation petition which led to the severance of Bloomfield's fire captains from a unit of firefighters. As a remedy, we ordered that he be promoted to deputy chief.

In this decision, we also considered a request to intervene filed by fire captains Frank Pross, Arthur Drury and Frank Maglione. They asserted that Friel's promotion would deprive them of a chance to compete for that position. They requested a new plenary hearing so they could present evidence "regarding the attrition rate of deputy chiefs in the department, and the age and retirement status of the current deputy chiefs." They also filed exceptions to the Hearing Examiner's recommended decision finding a violation and recommending a promotion remedy. We denied the request for a new plenary hearing. We found that evidence on the issue of whether the Township discriminatorily refused to promote Friel was within the Township's control. We did, however, consider their exceptions to the decision and proposed remedy. In part, we stated:

We have considered the remedy's effect on the intervenors. They have devoted time and effort in preparing for a promotional exam based on their belief that they were competing for a vacant position. Because of our decision, that position is no longer vacant and their promotional opportunities will be more limited. In considering a remedy, we must consider its effects on innocent parties and must avoid achieving justice for one employee at the expense of others. Nevertheless, we believe that ordering Friel promoted permanently is the appropriate remedy. The intervenors had the opportunity to take the exam only because the Township discriminated against Friel. Therefore, our remedy is necessary to vindicate Friel's rights and our statutory responsibility. Cf. Walters v. City of Atlantic, ___ F.2d ___, 42 FEP Cases 387, 397-398 (11th Cir. 1986).

On November 25, 1987, after receiving an extension of time, Pross and Maglione moved for reconsideration. They contend the case

should be remanded for further hearings. They have, for the first time, submitted certifications which they contend show that Friel "was not promoted for legitimate nondiscriminatory reasons." These certifications are from: (1) firefighters that contend that Friel has mishandled or inadequately performed his duties; (2) the fire chief who contends these incidents contributed to his decision not to promote Friel, and (3) the Business Administrator who contends that Friel was not promoted for reasons of economy and efficiency.

On December 28, 1987, Friel responded. He contends Pross and Maglione do not have standing because they are not eligible for promotion. He also denies the allegations contained in their certifications.

On January 11, 1988, Pross and Maglione responded. They oppose Friel's response and have advised that three more firefighters seek intervenor status.

We deny the motion for reconsideration. First, we doubt that we have jurisdiction over this case now that Pross and Maglione have filed a notice of appeal to the Appellate Division. See State of New Jersey (Public Defender), P.E.R.C. No. 86-93, 12 NJPER 199, 200 (¶17076 1987), aff'd App. Div. Dkt. No. A-2435-85T6 (2/17/87). Second, we will not consider new factual allegations contained in a motion for reconsideration. See N.J.A.C. 19:14-8.4. Pross and Maglione did not raise any factual allegations when they first moved to intervene. They should not be permitted to do so now. In any event, as we said in our original decision, such evidence was within

the Township's control and the Township was the proper party to present such a defense.

ORDER

The motion for reconsideration is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
January 21, 1988
ISSUED: January 22, 1988