

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ATLANTIC COUNTY
(DEPARTMENT OF CORRECTIONS),

Respondent,

-and-

Docket Nos. CO-H-96-412
CO-H-96-413

FRATERNAL ORDER OF POLICE LODGE NO. 34,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the County of Atlantic violated the New Jersey Employer-Employee Relations Act when it denied Fraternal Order of Police Lodge No. 34 president Frank Kovach access to the County Justice Facility and served Kovach with a notice of termination at negotiations and objected to his participation in negotiations because he had been fired. The Commission orders the County to rescind its absolute ban on access for Frank Kovach at the Gormley Justice Complex premises; grant Kovach reasonable access to County facilities for the purpose of conducting Lodge 34 union business, including representing unit employees in negotiating and administering the contract, representing employees in the investigation, filing and processing of grievances, and representing employees in disciplinary and grievance hearings; recognize Frank Kovach as long as he remains the duly elected president of Lodge 34; negotiate in good faith with the FOP's designated negotiations representatives, and to post a notice of its violations.

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.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ATLANTIC COUNTY
(DEPARTMENT OF CORRECTIONS),

Respondent,

-and-

Docket Nos. CO-H-96-412
CO-H-96-413

FRATERNAL ORDER OF POLICE LODGE NO. 34,

Charging Party.

Appearances:

For the Respondent, Paul Gallagher, County Counsel
(Kenneth M. Shumsky, Assistant County Counsel)

For the Charging Party, Bernard J. McBride, Jr., attorney

DECISION AND ORDER

On May 6 and 16, 1996, Fraternal Order of Police Lodge No. 34 filed unfair practice charges against Atlantic County (Department of Corrections). The charges allege that the County violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4(a)(1), (2), (3), (4), (5) and (7),^{1/} by

^{1/} 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. (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)

denying Lodge 34 president Frank Kovach access to the County Justice Facility and by serving Kovach with a notice of termination at negotiations and objecting to his participation in negotiations because he had been fired.

On September 23, 1996, the cases were consolidated and a Complaint and Notice of Hearing issued. On October 16, the County filed an Answer admitting the charges' factual allegations, but not their legal conclusions.

On October 21, 1996, Hearing Examiner Susan Wood Osborn informed the parties that the factual allegations were admitted to be true. On November 4, the FOP moved for summary judgment. On December 6, the County responded. The Commission Chair referred the motion to the Hearing Examiner.

On February 21, 1997, the Hearing Examiner recommended granting summary judgment. H.E. No. 97-22, 23 NJPER 206 (¶28100 1997). She found that a total ban on Kovach's access to the County Justice Facility interfered with protected rights and lacked a legitimate and substantial business justification. She also found

1/ Footnote Continued From Previous Page

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."

that the County violated the Act when it refused to recognize Kovach as Lodge 34's president because of his termination notice and when it objected to his participation on Lodge 34's negotiation's committee. She also found that serving Kovach's termination papers across the negotiations table tended to coerce and intimidate employees and violated the Act. Finally, she found no facts to support the remaining allegations.

On March 13, 1997, the County filed exceptions to one finding and to portions of the recommended Notice to Employees.

We accept the Hearing Examiner's recommendations with these minor modifications. The Hearing Examiner found that the County violated 5.4(a)(5) when it refused to recognize Kovach as Lodge 34's president because of his termination. We assume the Hearing Examiner erred when, in summary, she later indicated that there had been no 5.4(a)(5) violation.

The Hearing Examiner found that County Counsel Shumsky objected to Kovach's continued presidency and participation in negotiations. The County claims that it was not Shumsky's objection, but the County's, based on an FOP bylaw. There is no basis in the record to modify the Hearing Examiner's finding. We assume, however, that as County Counsel, Shumsky was representing the County's positions rather than stating his personal positions.

The Hearing Examiner recommended that the County be ordered to post a notice informing employees that it:

will not interfere with, coerce and intimidate employees in the exercise of their rights under

the Act, particularly, by serving employees with discipline or termination notices during the course of collective negotiations, and by interfering with the composition of Lodge 34's negotiations committee.

The County asserts that it continued to negotiate in good faith and did not discriminate against Kovach because of his union activities, dominate Lodge 34, or violate Commission rules. It proposes that it be ordered to post this notice:

We will refrain from serving disciplinary or termination notices at the negotiating table so as not to interfere with, coerce and intimidate employees in the exercise of their rights under the Act.

We accept the Hearing Examiner's recommendation because it addresses both the service of the termination notice and the objection to Kovach's participation in negotiations. However, we will modify the wording of the order to state that discipline or termination notices cannot be served at negotiations sessions.

The Hearing Examiner also recommended that the County be ordered to post a notice informing employees that it:

will rescind the absolute ban on access for Frank Kovach at the Gormley Justice Complex premises.

The County asserts that there is no absolute ban and that the notice should state:

We will grant Kovach reasonable access to non-secure areas of County facilities for the purpose of conducting Lodge 34 union business.

We accept the Hearing Examiner's recommendation to address the absolute ban contested in the unfair practice charge and to leave any contract interpretation issues about the extent of union access to County facilities to the negotiated grievance procedure.

Finally, the Hearing Examiner recommended that the County be ordered to post a notice informing employees that it:

will recognize Frank Kovach as long as he remains the duly elected president of Lodge 34.

The County asserts that FOP bylaws preclude Kovach from holding FOP office. There is no record support for that assertion and we reject the County's exception.

ORDER

A. The County of Atlantic is ordered to cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by the Act, particularly by totally banning Fraternal Organization of Police Lodge 34 President Frank Kovach from access to County property; preventing him from representing Lodge 34's unit members; serving employees with discipline or termination notices at negotiations sessions, and interfering with the composition of the Lodge 34's negotiations committee.

2. Refusing to negotiate in good faith with Lodge 34, particularly by preventing Frank Kovach from representing Lodge 34's unit members.

B. Take this action:

1. Rescind its absolute ban on access for Frank Kovach at the Gormley Justice Complex premises.

2. Grant Kovach reasonable access to County facilities for the purpose of conducting Lodge 34 union business, including

representing unit employees in negotiating and administering the contract, representing employees in the investigation, filing and processing of grievances, and representing employees in disciplinary and grievance hearings.


3. Recognize Frank Kovach as long as he remains the duly elected president of Lodge 34.

4. Negotiate in good faith with the FOP's designated negotiations representatives.

5. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

6. Within twenty (20) days of receipt of this decision, notify the Chair of the Commission of the steps the Respondent has taken to comply with this order.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Boose, Buchanan, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Finn abstained from consideration.

DATED: July 31, 1997
Trenton, New Jersey
ISSUED: August 1, 1997



NOTICE TO EMPLOYEES



**PURSUANT TO
AN ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION
AND IN ORDER TO EFFECTUATE THE POLICIES OF THE
NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,
AS AMENDED,**

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by totally banning Fraternal Order of Police, Lodge 34 President Frank Kovach from access to County property; preventing him from representing Lodge 34's unit members; serving employees with discipline or termination notices at negotiations sessions, and interfering with the composition of Lodge 34's negotiations committee.

WE WILL cease and desist from refusing to negotiate in good faith with Lodge 34, particularly by preventing Frank Kovach from representing Lodge 34's unit members.

WE WILL rescind our absolute ban on access for Frank Kovach at the Gormley Justice Complex premises.

WE WILL grant Kovach reasonable access to County facilities for the purpose of conducting Lodge 34 union business, including representing unit employees in negotiating and administering the contract, representing unit employees in negotiating and administering the contract, representing employees in the investigation, filing and processing of grievances, and representing employees in disciplinary and grievance hearings.

WE WILL recognize Frank Kovach as long as he remains the duly elected president of Lodge 34.

WE WILL negotiate in good faith with the FOP's designated negotiations representatives.

Docket No. CO-H-96-412 & CO-H-96-413

**ATLANTIC COUNTY
(DEPT. OF CORRECTIONS)**

(Public Employer)

Date: _____

By: _____

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, P.O. Box 429, Trenton, NJ 08625-0429 (609) 984-7372

APPENDIX "A"

H.E. NO. 97-22

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ATLANTIC COUNTY
(DEPARTMENT OF CORRECTIONS),

Respondent,

-and-

Docket Nos. CO-H-96-412
CO-H-96-413

FRATERNAL ORDER OF POLICE LODGE NO. 34,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Commission grant FOP Lodge 34's Motion for Summary Judgement and find that the County violated subsection 5.4(a)(1) of the Act when it imposed a total ban on the union president's access to County property. The Hearing Examiner found that the access ban lacked any legitimate business justification.

The Hearing Examiner further recommends that the County violated subsection 5.4(a)(1) when it served the union president with termination papers across the bargaining table and then objected to his participation on the union negotiations team.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

H.E. NO. 97-22

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ATLANTIC COUNTY
(DEPARTMENT OF CORRECTIONS),

Respondent,

-and-

Docket Nos. CO-H-96-412
CO-H-96-413

FRATERNAL ORDER OF POLICE LODGE NO. 34,

Charging Party.

Appearances:

For the Respondent, Paul J. Gallagher, County Counsel
(Kenneth M. Shumsky, Assistant County Counsel)

For the Charging Party, A.J. Fusco, attorney
(Richard S. Robinson, of counsel)

HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION
ON MOTION FOR SUMMARY JUDGMENT

On May 6 and May 16, 1996, Fraternal Order of Police Lodge No. 34 filed unfair practice charges with the Public Employment Relations Commission^{1/} alleging that the Atlantic County violated subsections 5.4(a)(1), (2), (3), (4), (5) and (7) of the New Jersey

^{1/} Lodge 34 sought to have these charges treated as amendments to an earlier Complaint, Docket No. CO-H-96-189. As the Hearing Examiner in that matter, I declined to permit the amendments, and these charges were docketed separately.

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.^{2/}

Lodge 34 alleges in its first charge (CO-H-96-412) that the County violated the FOP contract by denying Lodge 34 President Frank Kovach access to the County Justice Facility premises, beginning on March 20, 1996. Lodge 34 alleges that the denial of access to the premises prevented Kovach from carrying out his duties as Lodge 34 President.

In its second charge (CO-H-96-413), Lodge 34 alleges that during a negotiations session with Lodge 34's negotiators on May 9, 1996, the County served Kovach with a Notice of Termination and objected to his presidency of the Lodge and his participation in negotiations since he was fired and no longer a County employee. The FOP argues that these actions tended to intimidate and coerce employees in the exercise of their rights under the Act.

^{2/} These subsections 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. (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. (7) Violating any of the rules and regulations established by the commission."

On September 23, 1996, the Director of Unfair Practices issued a Complaint, Notice of Hearing, and Order consolidating the charges for hearing. On October 16, 1996, the County filed an Answer to the Complaint, stating,

The County admits the basic gravamen of the above-captioned charges, but not any legal interpretations or conclusions stated therein.

By letter of October 21, 1996, I advised the parties that, pursuant to N.J.A.C. 19:14-3.1, the factual allegations as contained in the charges were admitted to be true. On November 4, 1996, the FOP filed a Motion for Summary Judgment. On December 6, 1996, the County filed a response. The Commission Chair has referred the motion to me. N.J.A.C. 19:14-4.8(a).

Summary judgment will be granted:

...if it appears from the pleadings, together with the briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and the movant...is entitled to its requested relief as a matter of law... [N.J.A.C. 19:14-4.8(d)].

Rulings on motions for summary judgment require that any inferences be drawn against the moving party and in favor of the party opposing the motion. No credibility determinations are made and the motion must be denied if material factual issues exist. N.J.A.C. 19:14-4.8(d). Whether a "genuine issue" exists to preclude summary judgment depends on whether "the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the

alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Insurance Co. of America, 142 N.J.. 520, 540 (1995). A motion for summary judgment should be granted with extreme caution -- the procedure may not be used as a substitute for a plenary trial. Baer v. Sorbello, 17 N.J. Super.. App. Div. 1981); Essex Cty. Ed. Serv. Comm., P.E.R.C. No. 83-65, 9 NJPER 19 (¶14009 1982); N.J.. Dept. of Human Services, P.E.R.C. No. 89-52, 14 NJPER 695 (¶19297 1988).

Applying these standards, and relying upon the undenied facts as set forth in the charge in this matter, I make the following:

FINDINGS OF FACT

1. Lodge 34 represents the County's correction officers.
2. The County and Local 34 are parties to a collective negotiations agreement which provides at Article I, Section C:

The employee organization president or vice-president shall have access to the Gormley Justice Facility when off duty to conduct FOP 34 business.
3. On March 20, 1996, the County Deputy Warden distributed a memorandum to the Justice Facility's Central Control stating that, "effective immediately, Officer Frank Kovach is not permitted on the premises for any reason until further notice."
4. On May 9, 1996, the parties met at the County Library in Galloway, New Jersey for a negotiations session. The County negotiations committee included County Counsel Kenneth Shumsky and Warden Frank Mazzone. Lodge 34's negotiations committee consisted

of Attorney Mary Crangle, Lodge President Frank Kovach, and Correction Officers Edward Clopp, Anthony Jones, and Mitch Szczepanski. At the session, Warden Mazzone served Kovach with a Notice of Termination. Shumsky then objected to Kovach's continued presidency of the Lodge and his participation on the FOP negotiations committee since he was fired and no longer a County employee.

ANALYSIS

CO-H-96-412

Lodge 34 alleges that the County violated Article 21 of the parties' contract when, beginning on March 20, 1996, it denied Frank Kovach access to the County Justice Facility premises to prevent him from carrying out his duties as Lodge 34 President.

Lodge 34 argues in its brief that this action resulted in "numerous members" of Lodge 34 being denied a union representative of their choice at disciplinary hearings. In addition Lodge 34 argues that, because Kovach was barred from the union office, union business went unattended and grievances were not processed. Lodge 34 seeks an order restoring Kovach's full access to all County property to conduct Lodge 34 business. It also asks for counsel fees.

The County does not deny that it barred Kovach from County property. Rather, it argues in its response brief that Lodge 34's office is located within the "secured perimeter" of the jail, an area accessible only to employees and inmates. The County asserted

the following facts in its brief responding to the Motion: The entrance to the secured perimeter is controlled by a locking mechanism operated by the jail's central control. The Lodge 34 office is situated on the second floor, next to the Deputy Warden's office, which contains confidential inmate files and employee discipline files. The Lodge 34 office is also near an evidence storage area. The County's policy is not to permit non-employees inside the jail's secured area without an escort and/or prior authorization.

The County further asserts that a training trailer is located within the Gormley Complex, approximately 75 feet from the jail. The County proposes to make office space in the training trailer available for Lodge 34's use.

However, no affidavits accompanied the County's motion response. Therefore, the County's assertions as detailed above, cannot be considered as facts. They are merely argument.

An employer independently violates subsection 5.4(a)(1) if its action tends to interfere with an employee's statutory rights and lacks a legitimate and substantial business justification. Orange Bd. of Ed., P.E.R.C. No. 94-124, 20 NJPER 287 (¶25146 1994); Mine Hill Tp., P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986); New Jersey Sports and Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979); Gorman, Basic Text on Labor Law, at 132-34 (1976). The charging party need not prove an illegal motive. Orange; Hardin, The Developing Labor Law, at 75-78 (1992).

The County implemented a total ban on Kovach's access to the premises of the County Justice Facility. Absent a legitimate, substantial business justification for its actions, I find that the absolute prohibition of the union president from all access to County property tends to interfere with the rights of employees -- the right to have union representation at disciplinary and grievance hearings; and the right to have grievances properly investigated, filed, processed through the grievance procedure, and adjusted or arbitrated. An employer may not impose a total ban on access to its premises without a substantial, legitimate business reason. Bergen Cty., P.E.R.C. No. 84-2, 9 NJPER 451 (¶14196 1983). The County argues it had a legitimate business justification for barring Kovach from the "secured perimeter" of the jail. However, it presents no legitimate business reason for totally banning Kovach from County premises. Its absolute ban violated 5.4(a)(1) of the Act by denying Lodge 34 its right to access to its unit employees.

By way of remedy for the alleged violations,^{3/} Lodge 34 argues that Kovach should be given complete access to all County

^{3/} Lodge 34 submitted a series of memoranda with its charge, including a March 26, 1996, grievance from Kovach in which he alleges that the Deputy Warden barred him from attending the disciplinary hearing of a unit member, who was also on suspended status. Kovach asserts that he was ordered to leave County property because he was on suspended status, and that County Counsel told him to find another union representative to represent the suspended officer. I need not consider these factual assertions, since they were neither submitted as part of the charge nor as affidavits in support of the Summary Judgment Motion.

facilities and premises. However, giving every favorable inference to the County, there is a genuine issue of fact concerning the appropriateness of such a remedy. First, there is a question about Kovach's present status as an employee, as the County served him with a termination notice in May, 1996. Access for non-employees to the employer's property are determined by different standards than for employees. N.J. Dept. of Transportation, P.E.R.C. No. 90-114, 16 NJPER 387 (¶21158 1990), motion for recon. den. P.E.R.C. No. 91-28, 16 NJPER 535 (¶21237 1990). Second, the County asserts that certain areas of the jail itself are off-limits to non-employees for potentially valid security reasons.

However, to remedy the violation of the Act, it is not necessary to reach a definitive answer on what level of access is appropriate for Kovach under today's circumstances. Lodge 34 has not established that Kovach is entitled to access to the Lodge 34 office inside the jail's secured perimeter. The contract between Lodge 34 and the County does not guarantee Kovach access to the current Lodge 34 office. Rather, the contract guarantees the president or vice-president access. Second, the contract provides for access to an office in the Justice Complex facilities, not necessarily inside the restricted area of the jail itself. These issues are contract interpretation issues which are more appropriate for an arbitrator to examine. Should the County implement a new restriction on access for Kovach, the parties may dispute such a ban through in the contractual grievance process.

Accordingly, I find that the County violated 5.4(a)(1) of the Act when it interfered with employees' rights under the Act by implementing a total ban on access to the County Justice complex premises for Lodge President Frank Kovach.^{4/}

CO-H-96-413

Lodge 34 argues that the County's actions at the May 1996 negotiations session coerced and intimidated the members of Lodge 34's negotiations team. The County consents to a finding of a violation and a remedy.

Neither the employer nor the majority representative may dictate the other's choice of representatives for collective negotiations and grievance processing. N.J.S.A 34:13A-5.4(b)(2) expressly prohibits an employee organization from interfering with restraining, or coercing an employer's selection of its representatives, while 5.4(a)(1) and (5) implicitly prohibit an employer from interfering with, restraining, or coercing an employee organization's selection of its representatives. The Commission has previously found that, with certain exceptions not argued here, an employer violates the Act when it attempts to dictate the composition of the union's negotiations team. In No. Brunswick Bd. of Ed., P.E.R.C. No. 80-122, 6 NJPER 193 (¶11095 1980), we found that the Board violated the Act when it refused to meet with the

^{4/} Proof of actual interference with the rights of named employees is not necessary to find a violation. Commercial Tp. Bd. of Ed., P.E.R.C. No. 83-25, 8 NJPER 550 (¶13253 1982), aff'd App. Div. Dkt. No. A-1642-82T2 (12/8/83).

union's negotiating team unless non-unit employees were removed. In Boro. of Bradley Beach, P.E.R.C. No. 81-74, 7 NJPER 25 (¶12010 1980), the employer illegally sought to prevent the union from putting new hires on its negotiations team. In Bogota Bd. of Ed., H.E. No. 91-13, 17 NJPER 25 (¶22012 1990), aff'd P.E.R.C. No. 91-105, 17 NJPER 254 (¶22134 1991), the employer violated the Act when it refused to meet with the union negotiations team unless it removed its union president, who had been fired from the district. In Salem Cty., I.R. No. 86-23, 12 NJPER 546 (¶17206 1986) the employer illegally refused to negotiate because the union's negotiator had been suspended for striking his foreman.

I therefore, find that the County violated subsection 5.4(a)(1) and (5) when it refused to recognize Kovach as the Lodge 34 President because of his termination notice, and objected to his participation on the Lodge 34 negotiations committee.

Further, in the absence of a legitimate business justification, I also find that the County's actions in serving Kovach's termination papers across the bargaining table, particularly since that action was immediately followed by an objection to Kovach's participation in negotiations, tended to coerce and intimidate employees and interfere with their rights to assist the employee organization by participating in negotiations, and thus, violated section 5.4(a)(1) of the Act.

Finally, I find no violation of subsections 5.4(a)(2), (3), (4), (5) and (7). There are no facts showing that the County

discriminated against Kovach because of his union activities, dominated Lodge 34, refused to negotiate, or violated the Commission's Rules.

Accordingly, based upon the above findings and analysis, I recommend that the Commission grant Lodge 34's Motion for Summary Judgment regarding subsection 5.4(a)(1) of the Act. I recommend that the Commission dismiss the Complaint with regard to the remaining alleged violations of the Act.

RECOMMENDED ORDER

I recommend that the Commission order:

A. That the County cease and desist from:

1. Interfering with employees' rights under the Act by totally banning Lodge 34 President Frank Kovach from access to County property, preventing him from representing Lodge 34's unit members.

2. Interfering with, coercing and intimidating employees in the exercise of their rights under the Act, particularly, by serving employees with discipline or termination notices during the course of collective negotiations, and by interfering with the composition of the Lodge 34's negotiations committee.

B. That the County take the following affirmative action:

1. Rescind its absolute ban on access for Frank Kovach at the Gormley Justice Complex premises.


2. Grant Kovach reasonable access to County facilities for the purpose of conducting Lodge 34 union business, including representing unit employees in negotiating and administering the contract, representing employees in the investigation, filing and processing of grievances, and representing employees in disciplinary and grievance hearings.

3. Recognize Frank Kovach as long as he remains the duly elected president of Lodge 34.

4. Negotiate in good faith with the FOP's designated negotiations representatives.

5. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

6. Notify the Chair of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.^{5/}


Susan Wood Osborn
Hearing Examiner

DATED: February 21, 1997
Trenton, New Jersey

^{5/} Pursuant to N.J.A.C. 19:14-4.8(e), a decision on a motion for summary judgment which resolves the complaint in its entirety may be appealed to the Commission in accordance with N.J.A.C. 19:14-7.3(a).



RECOMMENDED



NOTICE TO EMPLOYEES

PURSUANT TO
AN ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION
AND IN ORDER TO EFFECTUATE THE POLICIES OF THE
NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,
AS AMENDED,

We hereby notify our employees that:

WE WILL NOT interfere with employees' rights under the Act by totally banning Lodge 34 President Frank Kovach from access to County property, preventing him from representing Lodge 34's unit members.

WE WILL NOT interfere with, coerce and intimidate employees in the exercise of their rights under the Act, particularly, by serving employees with discipline or termination notices during the course of collective negotiations, and by interfering with the composition of the Lodge 34's negotiations committee.

WE WILL rescind the absolute ban on access for Frank Kovach at the Gormley Justice Complex premises.

WE WILL grant Kovach reasonable access to County facilities for the purpose of conducting Lodge 34 union business, including representing unit employees in negotiating and administering the contract, representing employees in the investigation, filing and processing of grievances, and representing employees in disciplinary and grievance hearings.

WE WILL recognize Frank Kovach as long as he remains the duly elected president of Lodge 34.

WE WILL negotiate in good faith with the FOP's designated negotiations representatives.

Docket No. CO-H-96-412
CO-H-96-413 Atlantic County (Dept. of Corrections)
(Public Employer)

Date: _____ By: _____

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, CN 429, Trenton, NJ 08625-0429 (609) 984-7372

APPENDIX "A"



RECOMMENDED



NOTICE TO EMPLOYEES

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE POLICIES OF THE NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT, AS AMENDED,

We hereby notify our employees that:

WE WILL NOT interfere with employees' rights under the Act by totally banning Lodge 34 President Frank Kovach from access to County property, preventing him from representing Lodge 34's unit members.

WE WILL NOT interfere with, coerce and intimidate employees in the exercise of their rights under the Act, particularly, by serving employees with discipline or termination notices during the course of collective negotiations, and by interfering with the composition of the Lodge 34's negotiations committee.

WE WILL rescind the absolute ban on access for Frank Kovach at the Gormley Justice Complex premises.

WE WILL grant Kovach reasonable access to County facilities for the purpose of conducting Lodge 34 union business, including representing unit employees in negotiating and administering the contract, representing employees in the investigation, filing and processing of grievances, and representing employees in disciplinary and grievance hearings.

WE WILL recognize Frank Kovach as long as he remains the duly elected president of Lodge 34.

WE WILL negotiate in good faith with the FOP's designated negotiations representatives.

Docket No. CO-H-96-412
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