

I.R. No. 2005-7

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF TRENTON,

Respondent,

-and-

Docket No. CO-2004-312

TRENTON PBA LOCAL NO. 11,

Charging Party.

SYNOPSIS

A Commission Designee denies a request to restrain the City of Trenton from filing and proceeding to hearing on disciplinary charges filed against the PBA President. The Designee concluded that factual issues in dispute prevented finding a substantial likelihood of success on the merits of the charge, and that there was no irreparable harm as long as the City did not attempt to remove the president before completing appeal procedures before the Merit System Board.

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Appearances:

For the Respondent, Laufer, Knapp, Torzewski & Dalena,
L.L.C., attorneys, (Stephen E. Trimboli, of counsel)

For the Charging Party, Loccke & Correia, P.A. (Charles
E. Schlager, Jr., of counsel)

INTERLOCUTORY DECISION

On January 19, 2005, Trenton PBA, Local No. 11 (PBA) filed its fourth amended unfair practice charge with the Public Employment Relations Commission (Commission) in the above captioned matter. The amended charge alleges that the City of Trenton (City) violated 5.4a(1), (2), (3) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., (Act)^{1/} by serving police officer and PBA President Leonard

^{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 (continued...)"

Cipriano with a Preliminary Notice of Disciplinary Action on January 12, 2005, allegedly because he served as the union representative for a fellow officer at a disciplinary interview on December 1, 2004. The amended charge was accompanied by an application for interim relief with temporary restraints, seeking to restrain the City from proceeding to hear the charges filed against Officer Cipriano in the preliminary notice of discipline.

On January 21, 2005, an order to show cause was executed scheduling a return date of February 4, 2004. No temporary restraint was imposed. By request and agreement of the parties, the return date was rescheduled for February 17, 2004. Both parties submitted briefs, affidavits and exhibits in support of their respective positions and argued orally on the return date.

The City opposed the application. It argued that the notice of disciplinary action was not issued because Cipriano served as a "Weingarten" representative,^{2/} but because he failed to notify his superior he was leaving his post, and because he failed to

^{1/} (...continued)
employment to encourage or discourage employees in the exercise of the rights guaranteed to them by 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."

^{2/} "Weingarten" refers to the rights of union representatives to be present with employees in disciplinary interviews as established by the United States Supreme Court in NLRB v. Weingarten, Inc., 420 U.S. 251, 88 LRRM 2689 (1975).

follow a lieutenant's order that he resubmit a report of the incident.

The record reveals the following pertinent information:

On December 1, 2004, while on lunch break during his regular tour, Officer Hanson notified Cipriano he (Hanson) was going to Internal Affairs (IA) for an interview he thought might lead to his discipline. Cipriano notified the police dispatcher he was going to IA to represent Hanson. He (Cipriano) did not notify his supervisor. Within an hour, Cipriano completed the representation and returned to his tour.

On December 2, 2004, Lieutenant Pagnotta directed Cipriano to issue a report of the December 1 event. Cipriano responded by sending a letter to Director Santiago on December 2, 2004, explaining the December 1 circumstances. Cipriano and the PBA contend that in such circumstances the practice had been to notify the dispatcher, not the supervisor. The City neither confirmed nor denied that contention. Later, on December 2, 2004, Lt. Pagnotta issued Cipriano a written directive to resubmit his report "with proper format." Cipriano sent Pagnotta the same letter/report he had sent to Santiago.

On January 12, 2005, Cipriano was served with a Preliminary Notice of Disciplinary Action by Captain Amantia over the events of December 1 and 2, 2004. The notice charged Cipriano for failing to obey General Order 2004-7 regarding conduct by the PBA

President, not keeping his immediate supervisor aware of his whereabouts presumably on December 1, and for failing to respond to Lt. Pagnotta's order to resubmit a report in proper format. Director Santiago had no role in the preparation of that notice. The notice listed "removal" as discipline that may be taken. It is the Police Department's practice to list "removal" on every discipline charge. The PBA did not dispute that practice. Capt. Amantia amended the Notice of Discipline, removing any reference to General Order 2004-7. The Amended Notice charged Cipriano with violating police department rules and regulations for not notifying his supervisor on December 1 that he was leaving his post, and for failing to respond to Lt. Pagnotta's order to resubmit a report with the proper format. The Amended Notice also listed "removal" as disciplinary action that may be taken.

ANALYSIS

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State

College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

The issue before me is limited to deciding whether sufficient factual and legal basis exists to stay the City from proceeding on the recent disciplinary charges against Cipriano. I do not have the authority to dismiss or consider the merits of those charges.

My decision in Borough of Sayreville, I.R. No. 93-14, 19 NJPER 166 (¶24083 1993) is instructive in this case. In Sayreville the Borough had served the PBA president with a Preliminary Notice of Discipline seeking his termination. The charge alleged that the disciplinary charges were intended to intimidate and harass the president because of his exercise of protected conduct. The charge was accompanied by a request for interim relief seeking to restrain the Borough from proceeding on the disciplinary charges. After reviewing the parties submissions and considering their arguments, I found that a dispute existed over material facts regarding the merits of the disciplinary action and, therefore, concluded that the charging party could not demonstrate a substantial likelihood of success on the merits of the charge. I also held that the PBA had not demonstrated irreparable harm because no discipline had been imposed on the president, he was still working and available to represent the employees, and because of the availability of a

sophisticated appeal procedure through the Office of Administrative Law (OAL) and the Merit System board to decide the legitimacy of the disciplinary charges. On that basis, I denied the application for interim relief.

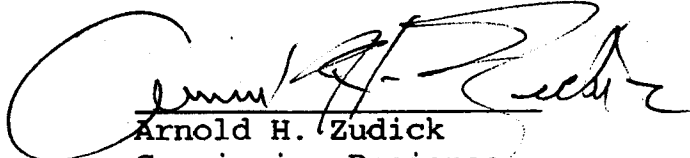
The same result is appropriate here. While there may be no dispute about what the prior practice has been in notifying a dispatcher, there is a dispute over whether a union representative who is about to become a "Weingarten" representative must notify his/her supervisor about leaving his post. More significantly, a dispute exists here over whether Cipriano complied with Lt. Pagnotta's order to resubmit his report. Those disputes prevent a finding that there is a substantial likelihood of success on the merits.

As in Sayreville, as long as the City here does not attempt to remove Cipriano prior to a full review of his disciplinary charges before the OAL and the Merit System Board, the mere filing of and proceeding to hearing on the disciplinary charges is not irreparable.

Accordingly, based upon the above circumstances and analysis, the application for interim relief is denied. This fourth amended charge will be combined with the preceding charges in this case for a complaint and plenary hearing.

ORDER

The application for interim relief is denied.



Arnold H. Zudick
Commission Designee

DATED: February 23, 2005
Trenton, New Jersey