

I.R. NO. 95-4

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MONMOUTH,

Respondent,

-and-

Docket No. CI-95-11

CARSON GIVENS,

Charging Party.

SYNOPSIS

A Commission Designee declines to restrain the County of Monmouth from altering the shift assignment of Carson Givens. Givens alleges that his shift was altered because of his exercise of protected rights as president of AFSCME, Local 2284. However, the County introduced evidence to demonstrate Givens' shift assignment was altered to provide better supervision for Mr. Givens in response to the findings of a survey conducted by the New Jersey Department of Health Facilities Evaluation team. Givens failed to demonstrate that he had a substantial likelihood of prevailing on the facts of this case.

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Appearances:

For the Respondent,  
Robert J. Hrebek, Esq.

For the Charging Party  
Matlin & Siegel, attorneys  
(Stephan Siegel, of counsel)

INTERLOCUTORY DECISION

On August 24, 1994, Carson Givens, an individual, filed an unfair practice charge alleging that the Monmouth County Board of Chosen Freeholders committed an unfair practice within the meaning of N.J.S.A. 34:13A-5.1 et seq.; specifically subsections 5.4(a)(1), (2) and (3).<sup>1/</sup> Givens specifically alleges the following: He is an employee of the County employed at the John L. Montgomery Nursing

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<sup>1/</sup> 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."

Home and is the President of AFSCME Local 2284, AFL-CIO. Mr. Givens has worked at the John L. Montgomery Nursing Home for more than 10 years and he has the second highest seniority on the evening shift out of approximately 25 titles.

On or about May 1994, the State of New Jersey conducted an inspection at the John L. Montgomery Nursing Home and uncovered numerous deficiencies and therefore threatened to cut off future funding for this institution. Among the items uncovered by the State's investigation were allegations by at least one patient that the union president was not conducting himself properly. The complaints by the patient were entirely related to Givens' conduct as a union representative for employees in the bargaining unit. Although no charges were filed against Givens, as a result of the State's investigation, Givens was transferred from the evening shift to the day shift.

Givens is also employed at the State's Marlboro Psychiatric Hospital where his shift is from 11:30 p.m. to 7:30 a.m. Givens' shift was transferred in an effort to bring about his termination from employment, for from time to time he is required to extend his hours past his 7:30 a.m. quitting time and he has even been required to work an additional shift.

Givens further alleges that the County has violated the provisions of its collective negotiations agreement with AFSCME by requiring Givens to work the day shift and that the transfer interferes with both his ability to conduct union activities, and

his ability to accompany employees to proceedings before the Office of Administrative Law and to disciplinary hearings held by the County. Givens must now use his personal leave time to fulfill his union obligation.

The unfair practice charge was accompanied by an Order to Show Cause which was executed and a hearing was conducted on September 14, 1994. Both parties were given an opportunity to present evidence and argue orally.

The County opposes the Order to Show Cause and relies on an affidavit of the County Administrator, Robert J. Collins. Collins states, by way of affidavit, that the John L. Montgomery Nursing Home was the subject of a survey conducted by the New Jersey Department of Health Facilities Evaluation team and this team's report announced several serious deficiencies, some of which were identified as "life threatening". The State named Carson Givens as the individual against whom serious patient complaints had been made. The State would not permit the release of the names of the complaining residents for fear of reprisal. The County believes that because of Mr. Givens' impact upon patient care, safety and quality of life, a more supervised shift is in the best interests of complying with the State's concerns, in the best interests of the facility and its residents, and in the best interest of Mr. Givens. Accordingly, Mr. Givens was transferred, with his consent, to the day shift.

Givens expressed concern about traveling from his job at Marlboro Psychiatric Hospital to the John L. Montgomery Nursing Home. The County, therefore, agreed to the change of the starting time of his shift from 7 a.m. to 8 a.m.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered.<sup>2/</sup>

The charging party has failed to meet its heavy burden. Givens did not demonstrate that he has a substantial likelihood of success in proving that the County was motivated by anti-union animus. Givens does not dispute that the State investigations took place. The County's contention that Givens was transferred because of the State report raises a significant doubt as to Givens ultimate success. Tp. of Bridgewater, 95 N.J. 235 (1984).


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<sup>2/</sup> Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

The County has not disciplined Givens and to the extent that the contract between AFSCME and the County has been violated as to shift assignments, Givens is free to pursue his grievance. It must be emphasized that a mere contract violation is not necessarily an unfair practice. See State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). Significantly, the charging party has not alleged a violation of subsection 5.4(a)(5).

Accordingly, the Application for Interim Relief is denied.

BY ORDER OF THE COMMISSION

  
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Edmund G. Gerber  
Commission Designee

DATED: September 19, 1994  
Trenton, New Jersey