

I.R. NO. 99-16

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,
(DEPARTMENT OF CORRECTIONS) AND
PBA LOCAL 105,

Respondents,

-and-

Docket No. CI-99-18

LEENORA SHOUDT,

Charging Party.

SYNOPSIS

Leenora Shoudt filed unfair practice charges, accompanied by an application for interim relief, against the State of New Jersey (Department of Corrections) on the basis that it violated her rights and wrongfully terminated her and against PBA Local 105 on the basis that it breached its duty of fair representation. The Commission designee denied charging party's application for interim relief finding that she did not establish that she would be irreparably harmed by the State's action or that she demonstrated a substantial likelihood of success on her claim that PBA Local 105 breached its duty of fair representation.

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Appearances:

For the Respondent - State of New Jersey,
Peter Verniero, Attorney General
(Stephan M. Schwartz, Deputy Attorney General)

For the Respondent - PBA Local 105,
Zazzali, Zazzali, Fagella & Nowak, attorneys
(Paul Kleinbaum, of counsel)

For the Charging Party,
Leenora Shoudt, pro se

INTERLOCUTORY DECISION

On October 8, 1998, Leenora Shoudt (charging party) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the State of New Jersey, Department of Corrections (Department) committed an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). On January 15, 1999, charging party filed an amended charge against the State and on February 10, 1999, she filed an additional amendment alleging that PBA Local 105

(Local 105) also violated the Act. Shoudt contends in her charge and amended charges that the State violated N.J.S.A. 34:13A-5.4a(1), (2), (3), (4), (5) and (7).^{1/} Charging party contends that Local 105 violated N.J.S.A. 34:13A-5.4b(1), (2), (3) and (5)^{2/}

On or about March 8, 1999, Shoudt filed an application for interim relief. An order to show cause was executed and a return date was set for April 6, 1999. The parties submitted briefs, affidavits and exhibits in accordance with Commission rules and argued orally on the return date.

^{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) 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."

^{2/} These provisions 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. (5) Violating any of the rules and regulations established by the commission."

It appears that on or about September 2, 1998, Shoudt called in sick and subsequently submitted a doctor's note indicating that she would be out of work until approximately September 10, 1998. It appears that on or about September 9, 1998, Shoudt submitted a leave of absence application which contained a return to work date of September 17, 1998. Apparently, the Department required Shoudt to be evaluated by a State psychiatrist before returning to work. On or about September 25, 1998, it appears that Shoudt underwent evaluation and was found to be unfit to return to duty. Apparently, since the State doctor found her to be unfit to return to work, yet her personal physician found her fit, the Department directed Shoudt to obtain a third medical opinion. The department provided Shoudt with a list of three doctors from among which she was instructed to select. It appears that Shoudt refused to undergo further examination. Apparently on or about January 20, 1999, Shoudt was terminated for failing to obtain a third medical opinion regarding her fitness to return to duty. Shoudt contends that she is in the process of appealing that action.

Shoudt alleges that the Department violated her rights. Shoudt contends that the Department wrongfully denied her request for a leave of absence as provided under the Federal Family Medical Leave Act. Charging party further contends that the Department wrongfully required her to submit to psychological examination; violated her right to maintain confidential medical records; wrongfully charged her with a "time and attendance" violation;

violated the collective agreement; conspired against her to have her removed from State service; violated her constitutional rights and violated numerous other laws, rules and regulations. Shoudt seeks an order through this proceeding directing that she be returned to work immediately.

Beginning in or about August 1997, charging party cites a number of instances where she has sought representation from Local 105. Shoudt contends that Local 105 breached its duty to fairly represent her by refusing to designate the specific representative of her choice. Charging party contends that she had "issues" with PBA Vice President Scott Kately, the representative which Local 105 designated to represent Shoudt. Shoudt argued that Local 105 was unwilling to assign the specific representative she requested, notwithstanding that on several occasions she refused to have Kately represent her.

Local 105 contends that it was prepared to represent Shoudt in the same manner in which it has represented other unit members. In each proceeding before the Department in which Shoudt was involved, Local 105 contends that it sent a representative on her behalf to the proceeding. However, Local 105 asserts that Shoudt rejected the Local 105 representative (Kately) on the record.

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).

In order to satisfy the irreparable harm standard, Shoudt must demonstrate that the harm which she will suffer could not be rectified at the conclusion of a final Commission determination. A claim of an inability to pay bills because of the loss of salary has not been viewed as irreparable harm. Morton v. Beyer, 822 F.2nd 364 (Third Cir. 1987). Moreover, the Commission has the authority to issue a remedial order at the conclusion of this case which could make Shoudt whole for any monetary loss suffered and direct reinstatement to her job.^{3/} The caselaw is clear in expressing the "...proposition that irreparable harm is not suffered where a monetary remedy can be provided at the end of the case and [this proposition] has been basic to the disposal of applications for interim relief by Commission designees...." Newark Bd. of Ed., I.R. No. 83-15, 9 NJPER 253, 255 (¶14116 1983). See also City of Newark, I.R. No. 99-7, 25 NJPER 81 (¶30033 1998); Bor. of Sea Girt, I.R. No.

^{3/} I make no finding here that this case is complaintable and would proceed to a final Commission determination on the merits.

98-28, 24 NJPER 440 (¶29202 1998); Montclair Tp., I.R. No. 98-2, 23 NJPER 475 (¶28225 1997); City of Jersey City, P.E.R.C. No. 77-13, 2 NJPER 293 (1976). Accordingly, I find that the charging party has not established as against the State that irreparable harm will occur if the requested interim relief is not granted.

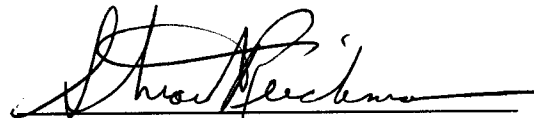
Regarding Local 105, it does not appear that charging party has established a substantial likelihood of succeeding in her charge alleging a breach of the duty to fairly represent. A majority representative breaches its duty of fair representation only when its conduct toward a unit member is "arbitrary, discriminatory, or in bad faith." Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Federation of Teachers, 142 N.J. Super. 486 (App. Div. 1976), citing Vaca v. Sipes, 386 U.S. 171 (1976). The U.S. Supreme Court has held that claims of a breach of the duty of fair representation, "...carr[y]...the need to adduce substantial evidence of discrimination that is intentional, severe and unrelenting to legitimate union objectives." Amalgamated Assn. of Street, Electric, Railway and Motor Coach Employees of America v. Lockridge, 403 U.S. 274, 301, 77 LRRM 2501, 2512 (1971). In this case, it appears that Local 105 has offered to represent the charging party in the same manner it represents other unit members, however, charging party has refused such representation. Thus, it does not appear that Local 105 has breached its duty of fair representation owed to charging party. Consequently, charging party has not demonstrated that it has a substantial likelihood of prevailing

against Local 105 in a final Commission decision on its legal and factual allegations.

Accordingly, I find that the charging party has not met all elements of the test required for the issuance of injunctive relief regarding either the Department or Local 105.

ORDER

Charging party's application for interim relief is denied. This case will proceed through the normal unfair practice processing mechanism.

A handwritten signature in black ink, appearing to read "Stuart Reichman", written over a horizontal line.

Stuart Reichman
Commission Designee

DATED: April 13, 1999
Trenton, New Jersey