

I.R. NO. 88-20

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ESSEX,

Respondent,

-and-

Docket No. CO-88-302

COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO,

Charging Party.

COUNTY OF ESSEX,

Respondent,

-and-

Docket No. CO-88-325

PUBLIC EMPLOYEES SUPERVISORS UNION,
a/w LOCAL 723, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Charging Party.

SYNOPSIS

A Commission Designee restrains the County of Essex from denying the taking of leave time for Union business to representatives of the charging parties, Communication Workers of America and Local 723, International Brotherhood of Teamsters. It was found that there is a substantial likelihood that the denial of leave time was based on anti-union animus. Further, the relative harm to the County in granting such time would be minimal while the denial of leave time to the unions involved could cause substantial and irreparable harm.

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Appearances:

For the Respondent
Dolores Capetola, Director of
Labor Relations

For the Charging Party - Communications
Workers of America, AFL-CIO
Kathleen A. King, Representative

For the Charging Party - Public Employees
Supervisors Union a/w Local 723, IBT
Irwin Perlis, President

INTERLOCUTORY DECISION

On May 26, 1988, the Communications Workers of America
("CWA") filed an Unfair Practice Charge with the Public Employment

Relations Commission ("Commission") against the County of Essex Department of Citizen Services ("County") alleging that the County violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"). More specifically, CWA alleged that the County violated §§5.4(a)(1), (3) and (5)^{1/} by denying David Weiner, President of CWA Local 1081, leave time to attend the Essex County Board of Chosen Freeholders meeting scheduled for May 18, 1988. The Unfair Practice Charge was accompanied by an Order to Show Cause asking that the County be restrained from denying David Weiner's leave time pursuant to the collective negotiations agreement between the parties. The Order was signed and made returnable for June 14, 1988 and was subsequently adjourned to June 17, 1988.

On June 13, 1988, Public Employees Supervisor Union affiliated with Local 723, International Brotherhood of Teamsters ("Local 723") filed an Unfair Practice Charge against the County.

^{1/} 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; 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; and (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."

It alleged that on May 1, 1988 the County violated §§ 5.4(a)(1), (3), (5) and (7)^{2/} of the Act when it told Irwin Perlis, President of Local 723, that it was changing its policy as to the granting of leave for union business and would make a determination on an individual basis before granting union business leave. On May 10, 1988, the County's Director of Welfare overruled Mr. Perlis' previously approved time off to attend the Board of Freeholder meeting which was scheduled for May 11, 1988. Local 723's Unfair Practice Charge was also accompanied by an Order to Show Cause. That Order was signed and made returnable for June 17, 1988. These matters have been consolidated.

The facts are largely undisputed. The contracts for both the CWA and Local 723 provide for leave for union business. The CWA contract provides:

ARTICLE XXVIII LEAVE FOR UNION BUSINESS

A. The County agrees to grant upon request of employees covered by this Agreement time off with pay for the purpose of attending Union conventions and conferences, provided that:

1. The total time off does not exceed the aggregate of fifty (50) days per annum.
2. Written notice specifying the amount of time off is received at least five (5) working days in advance of the granting of each period of time off.

^{2/} §5.4(a)(7) prohibits public employers, their representatives or agents from: "(7) Violating any of the rules and regulations established by the commission."

B. A portion or all of the aggregate days noted in Paragraph A above may be utilized for the purpose of having one Union representative attend each public meeting of the Essex County Board of Chosen Freeholders. Notice of attendance at such meetings must be received by Field Office Manager of the Union representative in advance of each such period of time off.

C. No leave shall become effective without prior approval by the County Welfare Division.

D. The Union has designated the Local President as the person from whom the requests for Union leave will originate.

E. The Union will provide the County Welfare Division with a list of names and titles of those Union officers, Executive Board members, and Stewards entitled to a leave for Union business. Requests for leaves shall be made at least one (1) week in advance with a copy of said request to be delivered to the appropriate Field Office Manager. Approval for Union activities shall be requested through the Human Resources Section of the Essex County Welfare Division and shall not be unreasonably withheld.

Local 723's contract provision concerning paid union leave is substantially similar to that of CWA.^{3/}

It is undisputed that the presidents of CWA and Local 723 were routinely granted leave for union business to attend Board of Freeholder meetings. On April 29, 1988, an article appeared in the Star Ledger quoting Weiner, who accused Nicholas Amato, County Executive, and Freeholder Thomas Giblin of "reneging on their commitment to have an open dialogue with labor." Weiner was also

^{3/} Paragraph C in the CWA contract is not a separate paragraph in Local 723's contract, rather, it is the last sentence in what is paragraph B.

quoted about proposed changes in the County's health benefits plan. On May 6, 1988, Alan Zalkind, Director of the Department of Citizen Services, told Weiner that effective immediately, the County would review the agenda of each board meeting and would grant union leave time only if matters on the agenda concerned employees. Union leave to attend the Freeholder meetings would be approved on a selective basis.

On May 9, 1988, Judyth L. Goldstein, Director of the Division of Welfare, sent Weiner a Memorandum which essentially repeats what Zalkind told Weiner on May 6, 1988. On May 11, 1988, Weiner received two memos; one was a copy of a handwritten memo from Catherine Addonizio, Field Office Manager, instructing Weiner's supervisors not to allow him to take either union leave time or personal time on Wednesdays (Freeholder meetings are on Wednesdays); the other memo, from Judyth L. Goldstein, denied Weiner's request for leave time to attend the May 11, 1988 Freeholder meeting. The memo states that: "since there is nothing on the Agenda that pertains to your Union Contract, your request to attend such meeting is hereby denied."

Irwin Perlis is President of Local 723 and an employee in the Supervisors Unit of the Essex County Welfare Division. Perlis was routinely granted leave time to attend Freeholder meetings. On May 6, 1988, Zalkind and Goldstein told Perlis that new criteria were being applied to determine whether employees could attend Board meetings. They stated that all requests to attend Board meetings

must be submitted to a field office manager, that requests would be held until the day before a Freeholder meeting and that the Freeholder's agenda would then be reviewed to determine if there were anything on the agenda that directly involved the Welfare Department. If the County determined there was nothing of interest to the Department, the request would be denied. On May 10, 1988, the Division Director overruled Perlis' previously approved request to attend the Freeholder meeting of May 11, 1988 and Goldstein told Perlis that if he requests to take a personal or vacation day on a Wednesday (the Board meeting day), such leave would have to be approved by her personally rather than the normal procedure of merely notifying an immediate supervisor.

On May 13, 1988, Perlis submitted a memo requesting a 1/2 day personal leave on May 18, 1988. The request was turned down by Perlis' supervisor who told him that the decision had to go to the Division Director for approval. Requests by Perlis for leave on any day but Wednesday would not be subject to approval by the Director.

The County argues that the clear contract language in both contracts grants the County discretion as to whether to grant leave time for union business. The contract language is discretionary. It states the Union "may be granted leave time." The County argues that it was merely exercising its inherent right to manage its operations in an orderly and efficient manner and moreover its actions were a contractual right.

While the contract language in question seems to limit the County's ability to deny union leave time, the language may be subject to differing interpretations and the County's action standing alone might not constitute a repudiation under State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

However, both unions argue that the County's actions were taken in retaliation for exercising protected rights and were it not for the article in the Star Ledger quoting David Weiner, the County would have never taken such action. The unions also argue that the harm here is irreparable. If the Freeholders take any action at a meeting where the union representatives are not present, the employees they represent would not have the benefit of union representation in attendance and once the opportunity for the unions to hear and comment on Freeholder action is gone, the unions could not be made whole again.

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.^{4/}

The County's initial reaction in not allowing either Weiner or Perlis the use of personal leave time to attend Freeholder meetings is suspect.^{5/} The contract places no limitation on the use of such leave.^{6/} The County wanted to keep these two union representatives out of the Freeholder meetings. This conduct evinces an intent to discourage the exercise of protected rights in violation of §(a)(3). Moreover, the County cannot stand in the shoes of the unions and decide what issues are of importance to employees. Only the union's representatives can make this determination. Such action interferes with the exercise of protected rights in violation of §(a)(1). Due to the nature of union representation at Freeholder meetings, I believe that the harm in denial of attendance is irreparable and in balancing the harms, the harms to the County in granting 1/2 day leave time to Perlis and


4/ 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).

5/ There are conflicts in the submitted affidavits as to what Zalkind told Weiner. Those statements have not been considered in this determination.

6/ It is noted that on June 2, 1988, approximately two weeks after the incident which precipitated this charge, the County announced that it would not limit the use of personal leave by Perlis or Weiner. However, these actions do not change the nature of the County's original actions.

Weiner are minimal, while denying union representatives the right to attend Freeholder meetings to see and comment upon actions taken by the Freeholders could cause substantial and irreparable harm to the employees they represent.

Accordingly, based upon the entire record before me, Essex County is hereby restrained from denying the approval of union leave time (which is otherwise properly applied for by Weiner or Perlis pursuant to the terms of the contracts) for attendance at Freeholder meetings. This is an interim order only and subject to a full plenary hearing.


Edmund G. Gerber
Commission Designee

DATED: June 23, 1988
Trenton, New Jersey