

I.R. NO. 95-12

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,
(DEPARTMENT OF TREASURY),

Respondent,

-and-

Docket No. CO-95-71

COMMUNICATIONS WORKERS OF AMERICA,

Charging Party.

SYNOPSIS

A Commission Designee declines to restrain the State of New Jersey, Department of Treasury, from discharging George Clinton Glover, a CWA shop steward. The facts concerning Mr. Glover's discharge are very much in dispute. CWA argues that the certification submitted by the State does not place material factual issues in dispute for the signer of the certification does not have first hand knowledge of the facts. However, the certification was accompanied by certain documents including hearing officer decisions. The State correctly argues that these documents are business records and therefore are exceptions to the hearsay rule. The disputed evidence was admitted.

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Appearances:

For the Respondent,
Deborah T. Poritz, Attorney General
(Michael L. Diller, Sr. Deputy Attorney General)

For the Charging Party,
Weissman and Mintz, attorneys
(Steven P. Weissman, of counsel)

INTERLOCUTORY DECISION

On September 13, 1994, the Communications Workers of America, AFL-CIO (CWA) filed an unfair practice charge with the Public Employment Relations Commission alleging that the New Jersey Governor's Office of Employee Relations (State) engaged in an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4 (a) (1), (3) and (5)^{1/} when it

^{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

Footnote Continued on Next Page

discharged George Clinton Glover, an employee of the Division of Taxation and a CWA shop steward for Local 1033, in retaliation for engaging in activities protected under the Act.

The CWA also submitted an order to show cause seeking the immediate reinstatement of Mr. Glover. The show cause order was executed and made returnable for October 18, 1994. A hearing was conducted on that date. The parties were given an opportunity to present evidence, argue orally and submit briefs.

The certifications submitted by the CWA assert that Mr. Glover was approached by a senior clerk in the Division of Taxation, Donall Williams, who wanted Glover to represent him in a dispute that Williams was having with a supervisor. When Glover attempted to represent Williams, the supervisor told Glover he wasn't needed and should go back to his desk. Glover did so. Two days later, Williams again approached Glover to represent him at a meeting with a supervisor and again Glover was told he wasn't needed. The supervisor became agitated and Glover returned to his desk. Ultimately, Glover was first suspended and then discharged for this activity.

1/ Footnote Continued From Previous Page

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. (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."

The State disputes that the personnel actions taken against Glover were for his exercise of protected activity. Rather, it maintains that the suspension and discharge were for insubordination and failure to follow established procedures. It specifically alleges that Glover threatened physical violence and directed obscene and offensive language at a supervisor and further, repeatedly entered a restricted area, the Document Control Center, despite an internal memorandum and oral direction not to enter the Center without prior permission.

The State supported its position through the certification of Carol Bencivengo, Assistant Director of Human Resources for the New Jersey Department of Treasury, who maintains all records concerning disciplinary action of employees in that department. Documents surrounding Glover's suspension and removal including hearing officer reports were submitted with Bencivengo's certification. These documents tend to support the State's position.

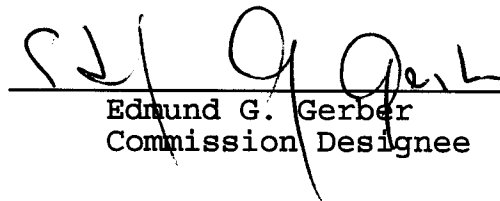
The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a 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.^{2/}

The CWA argues that Bencivengo's certification does not place material factual issues in dispute. Bencivengo does not claim personal knowledge of the facts certified to by Glover, so the accompanying documents, including hearing officer decisions, cannot be considered when evaluating the CWA's likelihood of success in its application for interim relief.

I cannot accept the CWA's argument. The State correctly argues that such documents are business records and therefore are exceptions to the hearsay rule. New Jersey Rules of Evidence, 803(c)(5) and (6) (1994-1995 Edition). These documents place the factual contents of the CWA in dispute. A plenary hearing is required to resolve the facts here. The CWA has not met its heavy burden. The Application for Interim Relief is denied. The matter shall go forward to a full hearing.

BY ORDER OF THE COMMISSION


 Edmund G. Gerber
 Commission Designee

DATED: November 17, 1994
 Trenton, New Jersey

^{2/} 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).