

I.R. NO. 98-10

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matters of

PUBLIC EMPLOYEES ASSOCIATION,

Respondent,

-and-

Docket No. CO-98-112

COMMUNICATIONS WORKERS OF AMERICA,

Charging Party.

PUBLIC EMPLOYEES ASSOCIATION,

Respondent,

-and-

Docket No. CO-98-113

IFPTE, LOCAL 195 AND SEIU LOCAL 518,

Charging Party.

SYNOPSIS

A Commission Designee declines to restrain, pending a final Commission decision, the Public Employees Association (PEA) from permitting Nancy Weber from serving as President of the PEA and soliciting charging parties' members to join the PEA. The charging parties allege Weber is a confidential employee within the meaning of the Act. The charging parties failed to demonstrate that Weber is a confidential employee.

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SYNOPSIS

A Commission Designee declines to restrain, pending a final Commission decision, the Public Employees Association (PEA) from permitting Nancy Weber, ~~who~~ the charging parties allege ~~is a~~ Weber is a confidential employee within the meaning of the Act, from serving as President of the PEA and soliciting charging parties' members to join the PEA.

~~****~~ The charging parties failed to demonstrate that Weber is a confidential employee.

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Appearances:

For the Respondent,
Katz & Dougherty, attorneys
(Thomas G. Tresansky, Jr., of counsel)

For the Charging Party - Communications Workers of America
Weissman & Mintz, attorneys
(Judian Chartier, of counsel)

For the Charging Party - IFPTE
Balk, Oxfeld, Mandell & Cohen, attorneys
(Arnold S. Cohen, of counsel)

INTERLOCUTORY DECISION

On September 29, 1997, the Communications Workers of America, AFL-CIO filed an unfair practice charge against the Public Employees Association (PEA) alleging that it engaged in unfair practices within the meaning of N.J.S.A. 34:13A-5.4(b)(1), (2) and

(3).^{1/} It is alleged that Nancy Webber, employed as a Technical Program Assistant in the State of New Jersey, Department of Transportation, is closely allied with management. Her position is confidential and therefore she is not a public employee employed within the meaning of the New Jersey Employer-Employee Relations Act. Nevertheless, she serves as President of the PEA and has openly solicited CWA bargaining unit members to join the PEA and authorize it to bargain with the State on their behalf.

On September 30, 1997, IFPTE Local 195 filed an unfair practice charge alleging that the PEA committed unfair practices within the meaning of N.J.S.A. 34:13A-5.4(b)(1), (2) and (5)^{2/} and made the same allegations as the CWA concerning Webber.

The unfair practice charges were accompanied by applications for interim relief. Show cause orders were entered into on October 12, 1997 and hearings on those orders were heard on

^{1/} These subsections 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."

^{2/} This subsection prohibits employee organizations, their representatives or agents from: "(5) Violating any of the rules and regulations established by the commission."

October 17, 1997.^{3/} Both parties had the opportunity to argue orally and submit briefs.

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).

N.J.S.A. 34:13A-3(g) defines confidential employee as:

employees whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties.

^{3/} On October 10, 1997, after the show cause order was executed, IFPTE filed a letter brief in which it alleged that Nancy Webber had, prior to her current position, served in a supervisory position and Steven Kook, who is active in the campaign of the PEA is currently in a supervisory position. These allegations while supported by a certification, were never alleged in the unfair practice charge filed by IFPTE. An amendment was filed by IFPTE on October 16, 1997. The allegations in the amendment were not considered at the show cause hearing. They were not the subject of the executed order. The respondent, pursuant to N.J.A.C. 19:14-9.2(d) is entitled to ten-day notice. A return date was set on these allegations in IFPTE's amended unfair practice for November 3, 1997 at 9:30 a.m.

N.J.S.A. 34:13A-5.3 of the Act provides that:

Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity; provided, however, that this right shall not extend to elected officials, members of boards and commissions, managerial executives, or confidential employees...

Here, the charging parties have not met their heavy burden. Although I make no determination as to the confidential status of Nancy Webber, on the basis of the evidence presented at the hearing,^{4/} the charging parties have not shown they have a substantial likelihood of success in prevailing in a final Commission decision.^{5/}

Accordingly, the applications for interim relief are denied.



Edmund G. Gerber
Commission Designee

DATED: October 21, 1997
Trenton, New Jersey

^{4/} The CWA sought to adjourn the hearing to subpoena Webber's job description and other unstated information from the State. No good cause was shown why such material was not sought prior to the hearing. Accordingly, the application to adjourn was denied.

^{5/} Although there was evidence adduced at the hearing concerning Webber's former status as a supervisory employee, these allegations were never alleged in the original unfair practice charge.