I.R. NO. 88-10

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MIDDLESEX,

Respondent,

-and-

AFSCME, LOCAL NO. 3440,

Party-in-Interest,

-and-

MIDDLESEX COUNCIL NO. 7, NJCSA,

Charging Party.

Docket No. CO-88-101

SYNOPSIS

A Commission designee denies interim relief on an application by Council 7 to reinstate dues deductions to it by the County, which the County had discontinued in September 1987 because AFSCME had become the collective negotiations representative for the unit of County employees involved. It was apparent that a serious question of the state of the law existed, namely, the relationship between Section 5.4(a) of our Act and N.J.S.A. 52:14-15.9e, which governs employees' choice of representative for dues deductions. A plenary hearing is necessary to resolve this issue.

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Appearances:

For the Respondent
Mark S. Ruderman, Esq.

For the Charging Party
Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, Esqs.
(James F. Clarkin, III, Esq.)

For the Party-in-Interest
Kirschner, Walters & Willig, Esqs.
(Sidney H. Lehmann, Esq.)

INTERLOCUTORY DECISION AND ORDER

On October 15, 1987, Middlesex Council No. 7, NJCSA (hereinafter the "Charging Party" or "Council 7") filed an Unfair Practice Charge with the Public Employment Relations Commission (hereinafter the "Commission") alleging that the County of Middlesex (hereinafter the "Respondent" or the "County") has engaged in unfair

practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that on August 13, 1987, AFSCME, Local No. 3440 (hereinafter "AFSCME") replaced Council 7 as the duly certified majority representative of certain employees employed by the County; that immediately prior thereto there were approximately 1050 members of the bargaining unit, who were also members of Council 7 and for whom a dues deduction was made by the County; that on or about September 4, 1987, the County unilaterally and without notice to Council 7 terminated the deduction of dues on behalf of those employees formerly represented by Council 7; that at the time that the County discontinued the aforesaid dues deduction all of the said employees had furnished to the County a written authorization for dues deduction as required by N.J.S.A. 52:14-15.9e; that at the time the County discontinued dues deductions Council 7 was indebted to several creditors in connection with Council 7's representation of the employees in the bargaining unit; that more than 95% of Council 7's income is derived from dues deductions; that Council 7 continues to be the certified majority representative of employees employed by the County in six Boroughs, e.g., Highland Park, etc.; and, further, that the County on September 3, 1987, entered into a Memorandum of Agreement with AFSCME for immediate termination of the aforesaid dues deductions to Council 7; and that this Memorandum of Agreement is not a complete "collectively negotiated written agreement" within the meaning of Title 52, supra; all of which is

alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1)-(3) of the Act.[1/]

In response to the Charging Party's application for interim relief, the undersigned issued an Order to Show Cause on October 29, 1987, returnable November 12, 1987, which, after an agreed upon adjournment, resulted in a hearing having been held on November 17, 1987, at the Commission's offices in Newark, New Jersey. Based upon the written submissions of the parties and plenary argument by counsel on November 17th, it was clear that there was no dispute as to any of the material facts set forth in the Unfair Practice Charge, supra. Although the undersigned denied the Charging Party's application for interim relief on the record on November 17th (Tr 36-41), this decision is issuing because of a request by counsel for the Respondent that there be a formal Interlocutory Decision and Order (Tr 41, 42).

DISCUSSION AND ANALYSIS

The Applicable Standard

As an example of one of many decisions on interim relief where the applicable standards for the grant thereof are set forth,

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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; (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."

see City of Vineland, I.R. No. 81-1, 7 NJPER 324 (¶12142 1981). In that case it was stated once again that the test for the grant of relief is twofold: there must be (1) a substantial likelihood of success on the merits both as to the facts and the law; and (2) irreparable harm if the requested relief is not granted.

Commission designees have more recently been admonished to address these standards in the light of the New Jersey Supreme Court decision in Crowe v. DeGoia, 90 N.J. 126 (1982) where the above-stated test is substantially the same, supplemented, however, by an additional requisite, namely, that a court or as here, an administrative agency, must consider the relative hardship to the parties if the requested relief is granted or denied.

It is clear that the Charging Party has satisfied the requisite that there must be a substantial likelihood of success on the merits as to the facts since, as noted several times above, the essential facts are not disputed at this stage of the proceeding. However, there remains the question as to whether or not the standard of a substantial likelihood of success on the merits as to the law has been satisfied, leaving aside for the moment the matters of irreparable harm and the relative hardship to the parties.

The State Of The Law

The Charging Party, in arguing that it has established a substantial likelihood of success on the merits as to the law, cites the case of Greater Egg Harbor Reg. School District, D.U.P. No. 87-19, 13 NJPER 516 (¶18194 1987) where the charge of the union

alleged that the District had unlawfully continued to deduct membership dues on behalf of a predecessor organization. The Director of Unfair Practices refused to issue a Complaint on the ground that the charging party became the majority representative on January 2, 1987, but no requests by employees in the unit to withdraw their written authorizations for dues deductions were made before January 1, 1987.[2/]

Thus, it appears to the undersigned that Greater Egg Harbor provides no authority for the relief requested by the Charging Party herein. The Respondent County correctly notes in its brief in opposition that Greater Egg Harbor also does not implicate N.J.S.A. 52:14-15.9e since its provisions on dues deductions do not apply to units in school districts.

The Charging Party argues next that the Memorandum of Agreement, which is annexed to the Unfair Practice Charge (C-1), and dated September 3, 1987, does not satisfy the exception set forth in N.J.S.A. 52:14-15.9e.[3/]

2/ This date, January 1st, is the operative date for the withdrawal for authorizations for dues deductions under N.J.S.A. 52:14-15.9e.

3/ This exception permits a public employer and a duly certified majority representative to enter into a "collectively negotiated written agreement which provides that employees included in the negotiating unit may only request deduction for the payment of dues to the duly certified majority representative..." This provision also adds that "...Such collectively negotiated agreement may include a provision that existing written authorizations for payment of dues to an employee organization other than the duly certified majority representative be terminated." [Emphasis supplied]

Council 7 contends that the above exception in Title 52 does not apply because the Memorandum of Agreement does not constitute a "contract bar" for the reason that it does not contain sufficient substantial terms and conditions of employment which would provide a stable labor relationship, citing County of Middlesex, P.E.R.C. No. 81-29, 6 NJPER 439 (¶11224 1980); City of Newark, P.E.R.C. No. 85-1, 10 NJPER 456 (¶15206 1984); and Appalachian Shale Products Co., 121 NLRB No. 149, 42 LRRM 1506 (1958). See also, USM Corp., 256 NLRB No. 162, 107 LRRM 1358, 1361 (1981) and Gaylord Broadcasting, 250 NLRB No. 58, 104 LRRM 1360 (1980). Put another way, the argument of Council 7 is that since the provisions of the Memorandum of Agreement do not constitute "substantial terms and conditions of employment," the provision for termination of dues deductions to Council 7 is ineffective and is not covered by the exception in Title 52, supra.

However, the County argues that the "contract bar" rules of both the Commission and the NLRB, supra, have nothing whatever to do with the above provision in Title 52 since the reference is only to a "collectively negotiated written agreement" with no amplification or definition as to what constitutes a "collectively negotiated written agreement." Thus, does the County contend that there is presented in this case "complex and novel legal issues," which cannot be resolved at the interim relief stage and necessarily requires the denial of the application for interim relief on the ground that there is a substantial question as to the likelihood of

success on the merits as to the law. Counsel for AFSCME urges essentially the same proposition, adding a constitutional argument regarding the "agency shop" aspect of the requested dues deductions.

It appears clear to the undersigned that at the interim relief stage of this case "complex and novel legal issues" have been presented, particularly, the relationship between Section 5.4(a) of our Act and N.J.S.A. 52:14-15.9e. These issues can only be resolved at a plenary hearing.

ORDER

The application of Council 7 for interim relief in this proceeding is DENIED on the ground that it failed to establish that it had a substantial likelihood of success on the merits as to the law, there being "novel and complex issues" regarding the interrelationship between our Act and Title 52, supra.

Alan R. Howe
Commission Designee

Dated: January 22, 1988
Trenton, New Jersey