

H.E. NO. 99-2

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WOODBRIDGE,

Respondent,

-and-

Docket No. CO-97-239

P.B.A. LOCAL 38

Charging Party.

SYNOPSIS

A hearing examiner denies a motion for summary judgment filed by the Township of Woodbridge. The complaint alleges the Township refused to supply PBA Local 38, the majority representative, with documentary evidence regarding an incident in which discipline was taken against employees represented by Local 38.

The Township argued the intent of Local 38 in filing this charge was to litigate the discipline, but since the discipline resulted in suspensions of more than five days and Woodbridge is a civil service community the discipline could only be challenged before the Department of Personnel. It was also argued that the material sought was confidential.

The hearing examiner found that the charge itself does not contest the discipline. Rather, it only alleges that the Township violated certain procedures contained in the parties' collective negotiations agreement. Further, the issue of confidentiality is appropriate for hearing.

This is an interlocutory decision only. This matter will go forward to a full hearing.

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Appearances:

For the Respondent, Genova, Burns & Vernioia, attorneys
(Robert C. Gifford, of counsel)

For the Charging Party, Balk, Oxfeld, Mandell & Cohen,
attorneys (Sanford R. Oxfeld, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION ON
MOTION FOR SUMMARY JUDGMENT

On May 11, 1998, the Township of Woodbridge filed a Motion for Summary Judgment, seeking the dismissal of Complaint CO-H-97-239 before the Public Employment Relations Commission. The charge upon which the complaint is based alleges the Township has refused to supply documentary evidence to PBA Local 38 regarding an incident which resulted in disciplinary action taken against members of Local 38.

The Township makes two basic arguments in support of its motion. The first is that the disciplinary action it took concerned major discipline and the PBA is seeking to arbitrate that discipline. However, Woodbridge is a civil service community

and accordingly any review of major discipline must be made by the Department of Personnel. Borough of Rutherford, P.E.R.C. No. 98-103, 24 NJPER 128, 130 (¶29065 1998). Since no appeal was made to the Department of Personnel, the PBA failed to utilize the proper form for review of major discipline. It cannot now attempt to appeal major discipline through binding arbitration. It follows that the PBA cannot obtain information regarding an appeal filed in an inappropriate form.

It's second argument is that the information sought is confidential. The PBA is not entitled to review the requested material. When the Township preferred the disciplinary charge against the four police officers its Internal Affairs Department conducted the investigation and such investigations are confidential.

The New Jersey Law Enforcement Officers' Protection Act, N.J.S.A. 40A:14-181, provides that:

Every law enforcement agency shall adopt and implement guidelines which shall be consistent with the guidelines governing the "Internal Affairs Policy and Procedures" of the Police Management Manual promulgated by the Police Bureau of the Division of Criminal Justice in the Department of Law and Public Safety, and shall be consistent with any tenure or civil service laws, and shall not supercede any existing contractual agreement.

The Police Management Manual (New Jersey Department of Law and Public Safety, Division of Criminal Justice, 1992), provides:

Confidentiality

The progress of internal affairs investigations and all supporting materials are considered confidential information. The contents of the internal investigation case files will be retained in the internal affairs unit and clearly marked as confidential. Only the police executive or their designee is empowered to release publicly the disposition of an internal affairs investigation or disciplinary action. In addition, the subject officer may authorize the release of copies of formal disciplinary charges with their outcome to any third party.

The Township maintains its Internal Affair Policy is based upon the Police Management Manual. It specifically provides:

Confidentiality

8.1 - The progress of Internal Affairs investigations and all supporting materials are considered "confidential" information.

85 - The subject officer may authorize the release of disciplinary charges and their outcome to any third party.

The Township argues release of this information would violate the Township's Confidentiality Policy.

I must deny the motion.

The PBA charge as incorporated in the complaint is limited to the allegation that the Township refused to supply information concerning a grievance. That grievance alleges the Town failed to comply with contractual procedures in the investigation of an incident which resulted in discipline. Although the review of major discipline must be before the Department of Personnel, the PBA arguably has the right to seek arbitration concerning a violation of negotiated procedures contained in the parties collective negotiations agreement. Red Bank Regional Ed. Assn. v. Red Bank Regional Bd. of Ed., 78 N.J. 122 (1978).

The refusal to supply a majority representative with information necessary to properly represent employees is an unfair practice. An employer must supply information to a majority representative provided it is potentially relevant. State of N.J. (OER) and CWA, P.E.R.C. No. 88-27, 13 NJPER 752 (¶18284 1987), recon. den. P.E.R.C. No. 88-45, 13 NJPER 841 (¶18323 1987), aff'd NJPER Supp.2d 198 (¶177 App. Div. 1988) [App. Div. Dkt. No. A-2047-87T7 (12/27/88)]

Although the right to information may be limited by the confidential nature of the material sought, the issue of the confidentiality of such information is a matter which can appropriately be resolved at a hearing. New Jersey Department of Treasury, P.E.R.C. No. 97-32; reversing in Part 22 NJPER 322 (271 95 1990), IR 96-27.

Moreover, I am not satisfied that the Township's internal affairs policy preempts this issue.

N.J.S.A. 40A-181 provides that "...any internal affair policy shall not supercede any existing contractual agreement" and the PBA is seeking information to ensure procedures contained in the contractual agreement were followed. Accordingly, there is an outstanding question here as to the application of N.J.S.A. 40A-181 with regard to the PBA's right for information needed to administer the contract.

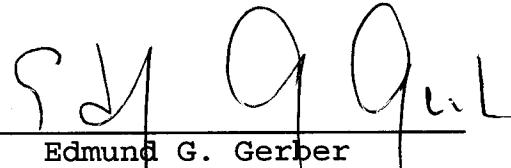
Finally, Township Policy states that the subject officers may authorize the release of the otherwise confidential

information. There is nothing in the record before me to indicate that the subject officers did not authorize the release of this information. (There is an assertion in the PBA's brief that such authorization was verbally given.)

Accordingly, there are significant legal and factual issues in this matter that can only be resolved after a full hearing.

Brill v. Guardian Life Insurance Co., 140 N.J. 520 (1995).^{1/}

The motion is denied.



Edmund G. Gerber
Hearing Examiner

Dated: July 10, 1998
Trenton, New Jersey

^{1/} In its reply brief, the Township has argued that the PBA grievance is out of time. Therefore, the PBA has no right to this information. However, it is not clear on the facts before me when the PBA became aware of the conduct which it believes violated the contract. A significant fact is in dispute. I cannot grant the Township's motion on that basis.