

I.R. NO. 95-11

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH BERGEN HOUSING AUTHORITY,

Respondent,

-and-

Docket No. CO-95-120

INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
LOCAL 560,

Charging Party.

SYNOPSIS

A Commission Designee restrains the North Bergen Housing Authority from interrogation of its employees concerning union preferences during an election campaign.

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Appearances:

For the Respondent,  
Mullica and Mullica, attorneys  
(Victor Mullica, of counsel)

For the Charging Party,  
Schneider, Goldberger, Cohen, Finn,  
Solomon, Leder & Montalbano  
(James M. Mets, of counsel)

INTERLOCUTORY DECISION

On October 20, 1994, Local 560, International Brotherhood of Teamsters filed an unfair practice charge with the Public Employment Relations Commission alleging that the North Bergen Housing Authority violated the New Jersey Employer-Employee Relations Act; specifically, N.J.S.A. 34:13A-5.4(1)(1), (3) and (5)<sup>1/</sup> when during a Local 560 representation drive among the

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<sup>1/</sup> These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the

Authority's maintenance employees, three employees were interrogated in the Executive Director's office by the Authority's attorney.

The unfair practice charge was accompanied by an Order to Show Cause which was executed and ultimately heard on November 14, 1994. The union claims that the employer's conduct so interfered with the ability of PERC to conduct a free and fair election that it is seeking an interim bargaining order pursuant to NLRB v. Gissel Packing Co., 395 US 575, 71 LRRM 2481 (1969).

Local 560 filed a petition to represent approximately 15 maintenance employees of the Authority (RO-95-61). The Authority admits that its attorney did, in fact, interview three of its employees as to whether or not they signed union authorization cards. The Authority claims, however, that it conducted these interviews after a Local 560 representative demanded that the Authority voluntarily recognize the union as the majority representative. When the Authority questioned the union as to whether it represented a majority of the employees, the union invited the Authority to investigate its claim to see if it did

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1/ Footnote Continued From Previous Page

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. (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."

represent a majority of the employees. It was only after this conversation that the Authority's attorney interviewed three employees in the Executive Director's office. The Authority claims it did not threaten or coerce these employees but only sought to verify the union's claim of majority status. However, in spite of ascertaining that these employees filed the authorization cards, the employer has not voluntarily recognized Local 560 as the majority representative.

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.<sup>2/</sup>

It is likely the Commission will find the polling of these employees as to their union preference an unlawful interference with the individual members right to freely choose union representation. I do not believe, however, that imposition of a Gissel Packing

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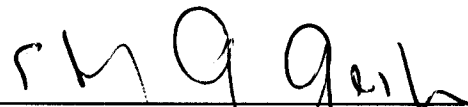
<sup>2/</sup> Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

bargaining order is appropriate at this time. The Commission has yet to consider the imposition of this type of remedy. I believe the law and facts must be fully explored by the full Commission before such a remedy is used. Nevertheless, I will enter an order restraining the employer from any further interrogations of its employees concerning their union preferences. Such action tends to interfere with their right to fully participate in activity protected under the Act.

Therefore, I enter the following ORDER:

The North Bergen Housing Authority is restrained from interrogating or otherwise questioning any of its employees as to their union preferences pending a final Commission decision in this matter.

BY ORDER OF THE COMMISSION



Edmund G. Gerber  
Commission Designee

DATED: November 16, 1994  
Trenton, New Jersey