

L.D. NO. 93-3

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION
LITIGATION ALTERNATIVE PROGRAM

In the Matter of

BOROUGH OF FAIR LAWN

Respondent,

-and-

Docket No. CO-L-93-205

FAIR LAWN PBA LOCAL 67

Charging Party.

Appearances:

For the Borough of Fair Lawn
DeMaria, Ellis, Hunt, Salsberg & Friedman, attorneys
(Richard M. Salsberg, of counsel)

For Fair Lawn PBA Local 67
Loccke & Correia, attorneys
(Michael J. Rappa, of counsel)

LAP DECISION

On December 8, 1992, Fair Lawn PBA Local 67 ("Local 67") filed an unfair practice charge against the Borough of Fair Lawn ("Borough") alleging that it violated the New Jersey Employer-Employee Relations Act by serving PBA Delegate John Ietto with a preliminary notice of discipline for failure to provide Police Chief William Gormanns with information related to grievance processing. On February 3, 1993 I conducted an exploratory conference at which the Borough and Local 67 jointly requested that the unfair practice charge be submitted to the Commission's Litigation Alternative Program. The parties requested that I issue the LAP decision, which would be based on Local 67's charge, the

Borough's position statement and the exploratory conference. The parties also agreed that this decision is binding and resolves the above-captioned unfair practice charge.

In September 1992, Police Chief Willian Gormanns issued a written order to PBA Delegate John Ietto requesting information related to Ietto's investigation of a grievance filed by Local 67 member Donald MacIsaac^{1/}. Ietto did not respond to Gormanns' September 1992 request in any manner. Gormanns renewed his written order requesting the information on October 15, 1992. Ietto responded to Gormanns in writing on October 21, 1992, stating that he would not turn over the information because it was PBA work product in preparation for a grievance. Gormanns again requested the information on October 26, 1992, and Ietto responded on October 27, 1992 with a summary of the information and the suggestion that Gormanns contact the PBA attorney for anything else. The final exchange was a renewed request for the information from Gormanns on October 27, 1992 and an October 28, 1992 response from Ietto again referring Gormanns to the PBA attorney.

Ietto was served with a preliminary notice of discipline on November 25, 1992, in which the Borough sought a 15-day suspension. The notice contained eight charges, the gravamen of which was Ietto's failure to provide Gormanns with the requested information.

^{1/} The parties' agreement that this decision resolves the above-captioned unfair practice charge does not preclude Local 67's right to contest a disciplinary charge filed against MacIsaac.

The Borough contends that its dispute with Ietto is not founded upon his failure to provide the information; rather, it objects to Ietto's failure to respond in any way to Gormanns' initial request in September 1992.

A union representative has no obligation to provide an employer with information that may be protected under the Act. However, an employee does have a duty to respond to requests from a superior. The Borough contends that it disciplined Ietto for failure to respond in any manner to Gormanns' initial request for information in September 1992. The parties do not dispute that Ietto did not respond to Gormanns' September 1992 written request for information. The parties also agree that Ietto did submit timely written responses to all of Gormanns' subsequent requests for information, while declining to provide the information on the basis that it was PBA work product related to grievance processing.

I find that under these circumstances, Ietto was not obligated to provide Gormanns with the requested information. Generally, parties have an obligation to exchange information necessary and relevant to administration of the collective negotiations agreement. However, as the Chief of Police, Gormanns had many alternative methods available to obtain the information he sought, including, but not limited to conducting his own interview with grievant MacIssac. Gormanns' insistence on the information, to the point of a proposed 15-day suspension for failure to provide it, could be perceived by Local 67 as undue interference with its right

to investigate and process grievances on behalf of its members. Section 4 of the parties' collective negotiations agreement authorizes Local 67 representatives to investigate grievances, and neither Gormanns nor any other employer representative has the right to interfere with Local 67's duties related to grievance processing or investigation.

However, Ietto's failure to respond in any manner to Gormanns' September 1992 request for information is not excused by his contention that he had no obligation to provide the information sought. Gormanns, as the Chief of Police, has the right to a timely and respectful response to his inquiries, and Ietto should have responded to Gormanns' September request in some manner. If Ietto contends, as here, that the information requested is inappropriate for disclosure, it does not excuse him from conveying his position to Gormanns through a timely, written response. Ietto did provide such responses to Gormanns' subsequent requests.

In order to prevent this situation from arising in the future, Ietto shall provide Gormanns with a written response to Gormanns' written requests related to his activity as a PBA delegate within five business days of receipt of such requests. Regardless of the content of such response, it is appropriate and proper to provide written responses to the Chief's written requests. This directive does not apply to requests Gormanns makes regarding Ietto's official police duties or his role as a sworn member of the Fair Lawn police department. It is axiomatic that Ietto has an

obligation to follow Gormanns' orders related to his official functions as a police officer, as do all sworn members of the force.

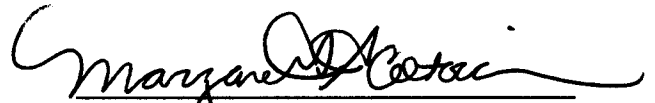
Although the Borough objects to Ietto's failure to respond to a direct order of the Chief in a timely manner, the gravamen of its disciplinary charges was Ietto's failure to provide the requested information. Given Ietto's response to Gormanns' subsequent requests, and this decision's mandate that Ietto will respond to Gormanns' future requests relating to Local 67 matters in writing within five business days, I find that the proposed discipline is not warranted under the totality of these circumstances. Implementation of the proposed discipline would also have a chilling effect on the labor relations process. Therefore, I order the discipline filed against John Ietto withdrawn. This includes withdrawal of any correspondence or documents relating to this matter from Ietto's personnel file.

Conclusion

1. Local 67 unit members and officers will provide written responses to written directives from the Chief's office within five business days of receipt of such directives.

2. Chief Gormanns will withdraw the disciplinary notice filed against John Ietto that is the subject of this unfair practice charge and will remove any correspondence and documents relating to this matter from Ietto's personnel file.

3. The parties will advise me within 20 days that this decision has been complied with. Thereafter, I will close the case.

A handwritten signature in cursive script, appearing to read "Margaret A. Cotoia".

Margaret A. Cotoia
Commission Designee

DATED: March 3, 1993
Trenton, New Jersey