H.E. NO. 2003-4

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

In the Matter of

MIDDLETOWN TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CI-H-2001-23

GARY LaBETTE,

Charging Party.

SYNOPSIS

A Hearing Examiner denies a Motion for Summary Judgment filed by a public employer. The Charging Party filed a charge alleging that he had been terminated from employment in retaliation for protected conduct. The Charging Party had also filed a grievance contending that his termination was without just cause. An arbitrator issued an award denying the grievance and sustaining the termination, finding just cause for the employer's action.

The Motion contends that the Commission must defer to the arbitrator's award. The Hearing Examiner finds that deferral is inappropriate when a Complaint alleges that employer conduct was motivated by anti-union animus. City of Englewood, P.E.R.C. No. 82-124, 8 NJPER 375 (¶13172 1982).

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Appearances:

For the Respondent
Kenney, Gross, Kovats & Campbell, attorneys
(Christopher Parton, of counsel)

For the Charging Party
Rudnick, Addonizio, Pappa & Comer, attorneys
(Thomas M. Comer, of counsel)

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

On April 12, 2002, the Middletown Township Board of Education filed a Motion for Summary Judgment and a Request for Stay of a hearing scheduled in the above-captioned matter. On April 15, 2002, the Chair referred the matters to me, pursuant to N.J.A.C. 19:14.4.8. On April 25, 2002, I granted the Request for Stay, pending my decision on the Motion.

On May 3, 2002, Charging Party counsel entered his appearance on behalf of Mr. LaBette, who had been a pro se litigant. On June 24, 2002, Charging Party counsel filed a letter brief in response to Respondent's Motion.

> Summary judgment will be granted:
>
> ...if it appears from the pleadings, together with the briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and the movant...is entitled to its requested relief as a matter of law... [N.J.A.C. 19:14-4.8(d)].

Rulings on motions for summary judgment require that all inferences be drawn against the moving party and in favor of the party opposing the motion -- in this case, Mr. LaBette. No credibility determinations are made and the motion must be denied if material factual issues exist. N.J.A.C. 19:14-4.8(d). Whether a "genuine issue" exists (which precludes summary judgment) depends on whether "the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995). A motion for summary judgment should be granted with extreme caution -- the procedure may not be used as a substitute for a plenary trial. Baer v. Sorbello, 17 N.J.Super. (App. Div. 1981); Essex Cty. Ed. Serv. Comm., P.E.R.C. No. 83-65, 9 NJPER 19 (¶14009 1982); N.J. Dept. of Human Services, P.E.R.C. No. 89-52, 14 NJPER 695 (¶19297 1988).

Applying these standards, and relying upon the briefs (no affidavits were submitted) filed in this matter, I make the following:

FINDINGS OF FACT

1. Gary LaBette was employed by the Middletown Township Board of Education for an undisclosed period of time. On May 13, 1999, a Request for Submission of a Panel of Arbitrators was filed by Teamsters Union Local #11 on behalf of LaBette (Docket No. AR-99-722). An arbitrator designated on July 14, 1999, pursuant to N.J.A.C. 19:12-5.3. The matter was settled on May 10, 2000.

On October 18, 1999, another Request was filed by Local #11 on behalf of LaBette (Docket No. AR-2000-238). The Director of Arbitration informed the parties of the Request by letter dated October 22, 1999. On December 2, the Director issued a letter advising the parties of the designated arbitrator.

2. On October 19 and November 3, 2000, LaBette filed an unfair practice charge and amended charge alleging that the Board terminated his employment in "retaliation" and in "malicious prosecution," contrary to an agreement on a grievance or grievances he reached with the Board on April 6, 2000. The Board's action allegedly violates 5.4a(3) and (1) of the Act.[1/]

3. On October 16, 2000, a grievance arbitrator conducted a hearing regarding LaBette's termination. The issue before the arbitrator was: "Was the grievant, Gary LaBette, discharged for

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1/ These provisions 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. (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."

just cause? If not, what shall the remedy be"? On December 1, 2000, the arbitrator issued an opinion denying the grievance and sustaining LaBette's termination. According to the opinion, the termination was "retroactive to July 31, 2000" for LaBette's conduct on July 27, which was not contested by Local #11. According to the opinion, Local #11's position at the hearing was that LaBette's infraction was conduct that was "widespread and that other employees [engaging in that conduct] were not discharged."

The arbitrator found that LaBette's testimony about "supervisors using Board equipment without permission" had "lacked credibility" and that his cross-examination supported the Board's claim that LaBette's claim was "totally without merit and in fact was false." The arbitration also found that LaBette "misled a fellow worker," had "intentionally and with premeditation" engaged in "time theft" and had presented "no mitigating circumstances."

ANALYSIS

The Board contends that the Commission must defer to the arbitrator's opinion and award and that even if LaBette's allegations are deemed true, the Board was found to have had "just cause" for the termination.

I deny the Motion. In City of Englewood, P.E.R.C. No. 82-124, 8 NJPER 375 (¶13172 1982), the Commission rejected the notion of deferring to an arbitration award if a Complaint sets forth allegations of anti-union animus. The Commission wrote:

> . . . [W]e hold that deferral to an arbitration award is inappropriate to the extent that a

> Complaint contains allegations of anti-union motivation and discrimination which have not been presented or considered in arbitration. [citing Suburban Motor Freight, Inc., 247 NLRB No. 2, 103 LRRM 1113 (1980)]. [8 NJPER 377]

See also PLRB v. Pine Grove Area School Dist., 10 PPER 10167 (1979); New York City Transit Authority, 4 PERB 4504 (1971).

Anti-union discrimination claims were not presented or considered by the arbitrator, pursuant to his December 1, 2000 award. Deferral is inappropriate. The Board is not entitled to its requested relief as a matter of law.

Jonathon Roth
Hearing Examiner

DATED: August 13, 2002
Trenton, New Jersey