

I.R. No. 2011-34

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,
(DEPARTMENT OF CORRECTIONS),

Respondent,

-and-

Docket No. CO-2011-281

STATE CORRECTIONS OFFICERS
PBA LOCAL 104,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief based upon an unfair practice charge alleging that the State commenced a sexual harassment investigation of a PBA local president which also permits it to insert itself into the "internal operations" of the PA, violating 5.4a(1) and (2) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The application sought a temporary restraint of the investigation.

The Designee denies the request for a temporary restraint and the request for relief. The Designee finds that the PBA did not demonstrate a substantial likelihood of success on the merits of the case.

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Appearances:

For the Respondent, Paula T. Dow, Attorney General
(Geri Benedetto, Deputy Attorney General)

For the Charging Party, Zazzali, Fagella, Nowak,
Kleinbaum & Friedman, attorneys (Robert A. Fagella, of
counsel)

INTERLOCUTORY DECISION

On January 20, 2011, State Corrections Officers PBA Local 104 (PBA) filed an unfair practice charge against the State of New Jersey, Department of Corrections (State), together with an application for interim relief seeking temporary restraints, a proposed order to Show Cause, exhibits, a certification and brief. The charge alleges that sometime after January 10, 2011, the State commenced an investigation of sexual harassment allegations filed against PBA President Trent Norman, which includes inquiry into meetings of the executive board of PBA and instructions on how the PBA should operate its office and when

and where Norman and PBA trustee Darlene Colquitt, the complainant, may perform their duties as PBA officers. The charge alleges that on January 10, 2011, Colquitt "submitted an allegation of sexual harassment" against Norman, contending that he acted improperly at union offices, which are not work locations of the State or State property. The charge alleges that the State has "inserted itself into the internal operations of the PBA and has threatened disciplinary action against PBA officials who refuse to cooperate" with its investigation. The State's conduct allegedly violates 5.4a(1) and (2)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act).

The application seeks a temporary restraint of the State's internal affairs investigation or any investigation of allegations made by Colquitt; and an order enjoining the State from interfering, dominating or intimidating officials of the PBA.

On January 21, 2011, I issued an order to Show Cause without a temporary restraint, specifying February 23, 2011 as the return date for argument in a telephone conference call. The Order was

^{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. (2) Dominating or interfering with the formation, existence or administration of any employee organization."

limited to an allegation that the State was ". . . instructing PBA 105 how it should operate its own office, and when and where PBA President Trent Norman and PBA trustee Darlene Colquitt may perform their responsibilities as PBA 105 officers." I also directed the State to file a response by February 15, 2011.

On January 26, 2011, the PBA filed a letter requesting reconsideration of its request for a temporary restraint of the internal affairs investigation or requesting that the return date on the signed Order be rescheduled for the week of January 31. On January 28, the State filed a letter opposing the PBA's requests and generally setting forth its response to the unfair practice charge. The State asserts that Norman and Colquitt are corrections officers who are released during work hours to conduct union business; that Colquitt's sexual harassment complaint was filed with the State; that the State is not interfering with "the internal affairs of PBA 105: or union business;" and that the alleged conduct in the sexual harassment complaint is "subject to State policy prohibiting sexual harassment." On January 31, 2011 and February 1, 2011, the parties filed letters. On February 2, I issued a letter advising that the return date was changed to February 10 and that the State's response was to be filed by February 9. On the return date, the parties argued their cases. The following facts appear.

On January 10, 2011, Darlene Colquitt, a State corrections officer and PBA representative sent an e-mail to PBA Vice President Lance Lopez with copies to PBA counsel and Victoria Kuhn, Director of the Equal Employment Division of the New Jersey Department of Corrections, complaining of the conduct of PBA 105 President Trent Norman. Her correspondence recounts specific episodes of sexual harassment in the PBA offices commencing December 21, 2010 and requests that Norman be removed from the presidency immediately.

In 1999, the State of New Jersey issued a "policy prohibiting discrimination in the workplace," with revisions in 2005 and 2007. The policy in part prohibits "sexual harassment," providing "zero tolerance." It applies "to all employees" and pertains to "unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct . . ." The policy requires each State agency to designate an individual(s) to receive and investigate such complaints, who in turn conduct(s) investigations promptly, thoroughly and ". . . in a way that respects, to the extent possible, the privacy of all person involved."

PBA Vice President Lopez informed Norman and Colquitt that he ". . . would be the person through whom all further activity in this matter would be conducted." The PBA has retained a named attorney to conduct an investigation of the events concerning

Colquitt's complaint and to report findings to the PBA executive board by February 10, 2011. Kuhn received a copy of Colquitt's complaint from Lopez on January 12, 2011, following his phone call to her inquiring whether the EED will conduct an investigation. Kuhn confirmed to Lopez on an unspecified date that EED will investigate the complaint.

On January 12, 2011, Kuhn issued a letter to Norman on behalf of the State, advising that he was a respondent in a sexual harassment complaint filed by Colquitt. The letter specifies that Renee Earlie-Collary is the designated investigator of the matter, advises that such investigations are confidential and that Norman ". . . should not discuss this matter with anyone who is not directly involved in the investigation." Kuhn also wrote:

The EED understands that your position with PBA 105 requires you to conduct official business at the PBA office. It is also understood that Ms. Colquitt, as a trustee with PBA 105, must also conduct official union business at the union office, generally two union days per month, as well as two additional days after work. If this matter arose within an institution, the two parties would be separated pending the investigation. To ensure that a level of separation exists between you and the complainant during the investigation, Ms. Colquitt has been instructed to provide the scheduled dates and times that she will be working at the PBA office to VP Lopez so that arrangements are made to ensure that you are not at the office during that time.

On January 13, 2011, PBA Counsel issued a letter Kuhn, advising that ". . . neither you nor the DOC has any jurisdiction in this matter" and that the dispute involves "the internal operations of PBA 105."

The EED of the State DOC has conducted expedited investigatory interviews of witnesses, ". . . only as to those allegations raised in Colquitt's complaint." The questions asked of witnesses were,

. . . whether they knew the complainant; in what capacity did they know the complainant; if they had spoken to the complainant or respondent recently; whether the witness was at the PBA office during the alleged acts of sexual harassment; if they were contacted by anyone about the case; whether the witness was at the PBA office at the same time as the complainant; what is the witnesses responsibility at the PBA office; and whether the witness observed any inappropriate behavior of sexual nature by Norman to Colquitt. [Earlie-Collary certif., p.2]

The interviews did not include any specific questions involving union business; the questions dealt solely with the "union office as the location of the allegations of sexual harassment . . ." and whether the "witnesses had made any observations regarding the allegations." The only remaining investigatory interview is with "respondent Norman" and it is scheduled for February 15, 2011.

ANALYSIS

A charging party may obtain interim relief in certain cases. To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

Section 5.4a(2) of the Act prohibits public employers from "dominating or interfering with the formation, existence or administration of any employee organization." In Atlantic Comm. Col., P.E.R.C. No. 87-33, 12 NJPER 764 (¶17291 1986), the Commission explained:

Domination exists when the organization is directed by the employer, rather than the employees. See, e.g., Han-Dee Spring & Mfg. Co., 132 NLRB No. 122, 48 LRRM 1566 (1961). Interference involves less severe misconduct than domination, so that the employee organization is deemed capable of functioning independently once the interference is removed. It goes beyond merely interfering with an employee's section 5.3 rights; it must be aimed instead at the employee organization as an entity.
[12 NJPER 765]

The Commission also wrote in another case that the type of activity prohibited by 5.4a(2) must be ". . . pervasive employer control or manipulation of the employee organization itself."

North Brunswick Tp. Bd. of Ed., P.E.R.C. No. 80-122, 6 NJPER 193, 194 (¶11095 (1980)).

The PBA asserts that the State has no legitimate business reason to conduct its own investigation of Colquitt's allegations, which concern only "conduct involving the internal affairs and operations of PBA 105 that exclusively took place while PBA 105 business was being conducted at PBA offices and during PBA events." It also contends that the State's investigation provides the employer ". . . access to sensitive information regarding the internal operations of its organization and relationships among officials of the PBA." The PBA is concerned that the investigation ". . . will inevitably involve inquiries about how meetings of the PBA Executive Board are conducted, the relationships between individual officials of the PBA," etc.

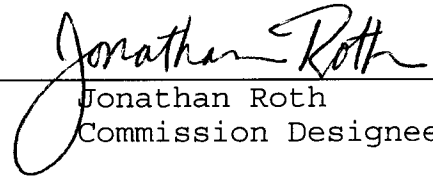
The uncontested facts show that Norman and Colquitt are State employees, that a sexual harassment complaint against the PBA president was filed with the State and the State has a "zero tolerance" policy concerning sexual harassment which demands prompt investigation of all such matters. The facts also indicate the investigation is focused narrowly upon the circumstances which prompted the harassment complaint and that

the State has advised the PBA vice president to arrange that Colquitt's and Norman's visits to the PBA office are not simultaneous.

I find that the PBA has not demonstrated a substantial likelihood of success on its factual and legal allegations.

ORDER

The request for interim relief is denied.



Jonathan Roth
Commission Designee

DATED: February 14, 2011
Trenton, New Jersey