

I.R. NO. 2014-5

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEWARK STATE OPERATED SCHOOL DISTRICT,

Charging Party,

-and-

Docket No. CE-2014-008

NEWARK TEACHERS UNION, LOCAL 481,  
AFT, AFL-CIO,

Respondent.

SYNOPSIS

A Commission Designee denies an application for interim relief filed by the Charging Party alleging that the Respondent committed violations of the Act when the Respondent filed nine grievances in an alleged attempt to abrogate the Memorandum of Agreement ("MOA") signed between the parties and when the Respondent unilaterally printed and distributed a draft collective negotiations agreement ("CNA"), not approved by the Charging Party, to its members.

The Charging Party asserted that the grievances were filed by the Respondent in "bad faith" in an attempt to undermine the agreed upon MOA and constituted an unfair practice under the Act and that the printing of an alleged "fraudulent" and "unofficial" CNA, which appeared to be an official document approved by the parties, was similarly a violation of the Act. The Respondent asserted that the grievances had merit and were filed in an attempt to enforce the terms of the MOA and the "draft" CNA printed by the Respondent accurately reflected the terms of the MOA and was essentially a reference tool for its members. The Respondent maintained that the actual CNA between the parties was still the MOA and also indicated that the Charging Party had never presented a draft version of the CNA to the Respondent for review and signature.

Regarding the grievances filed by the Respondent, the Designee found that the that material facts were in dispute regarding the Respondent's motive in filing the grievances, and that the issue of whether or not the filing of grievances in bad faith can constitute an unfair practice appeared to be a matter of first impression for the Commission.

With respect to the printing and dissemination of the "draft" CNA by the Respondent, the Designee found that it was not clear if the actions of the Respondent, considering all of the facts, constituted a violation of the Act, it appeared to be a matter of first impression for the Commission and that there was no irreparable harm to the Charging Party since it had informed its employees on two occasions of the alleged discrepancies with the draft CNA and the Respondent was not attempting to enforce the terms of the document.

As a result, regarding both aspects of the application, the Designee found that the Charging Party had not established a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations, a requisite element to obtain interim relief.

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEWARK STATE OPERATED SCHOOL DISTRICT,

Charging Party,

-and-

Docket No. CE-2014-008

NEWARK TEACHERS UNION, LOCAL 481,  
AFT, AFL-CIO,

Respondent.

Appearances:

For the Charging Party, Scarinci Hollenbeck, attorneys  
(Ramon E. Rivera, of counsel and on the brief,  
Christina M. Michelson, of counsel and on the brief)

For the Respondent, Zazzali, Fagella, Newark, Kleinbaum  
& Friedman, P.C., attorneys (Colin M. Lynch, of  
counsel)

INTERLOCUTORY DECISION

On November 12, 2013, the Newark State Operated School District ("District" or "Charging Party") filed an unfair practice charge against the Newark Teachers Union, Local 481, AFT, AFL-CIO ("NTU"). The charge alleges that the NTU violated sections 5.4b(1), (2), (3), (4) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act")<sup>1/</sup> when, (1) after signing a Memorandum of Agreement

---

<sup>1/</sup> These provisions prohibit employee organizations, their representatives or agents are prohibited from:  
"(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act.  
(continued...)

(MOA)<sup>2/</sup> with the District, the NTU filed nine "frivolous" grievances with respect to the MOA regarding the agreed upon financial provisions, step movement established by the PEER Oversight Committee, starting salaries, payment of bonuses and the District's evaluation framework in an attempt to "unwind" and "abrogate" the agreed upon language in the MOA in violation of the Act; and (2) the NTU committed an unfair practice when it unilaterally printed and disseminated a "fraudulent" and "unofficial" collective negotiations agreement (CNA),<sup>3/</sup> that allegedly incorporated the terms of the MOA, to its over 4000 members that had the District's seal and Superintendent's name on the document requiring the District to send out two statements to its employees to clarify the "errors" and that the NTU improperly

---

1/ (...continued)

(2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances.

(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit.

(4) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (5) Violating any of the rules and regulations established by the commission."

2/ The MOA was executed by the parties on October 18, 2012 and ratified by the NTU members on November 18, 2012. Except as modified by the MOA, the previous CNA is still in effect and provides for binding arbitration.

3/ The District maintains that the NTU's unilateral CNA erroneously combined the base salaries and the stipend into one amount which does not reflect the terms of the MOA signed by the parties.

used district funds without authorization when it printed over 4000 copies of the above referenced CNA.<sup>4/</sup>

The charge was accompanied by an application for interim relief, together with a brief and exhibits and a certification from Laurette Asante, Esq., Director of Labor Relations for the District.

The application seeks an Order directing the following: requiring the NTU to cease engaging in unfair practices in violation of the Act and to adhere to the MOA; to cease filing frivolous grievances and attempting to abrogate the MOA; directing the NTU to negotiate in good faith with the District; directing the NTU to abide by the terms and conditions set forth in the MOA; restraining arbitration in the nine grievances; directing the NTU to cease and desist from disseminating the Unofficial CNA; directing the NTU to negotiate in good faith with the District in the drafting of a new CNA; and, any other relief that the Commission deems just and equitable.

On November 13, 2013, I issued an Order to Show Cause specifying November 26 as the return date for oral argument via

---

<sup>4/</sup> The District also provided two newspaper articles as exhibits and argues in its brief that the NTU essentially thwarted the District's attempts to apply for the "Race to the Top Grant" because the NTU allegedly refused to participate in the application process. The grant involved \$30 million in federal funds. This, however, was not alleged as a potential violation in the unfair practice charge. As a result, I am not considering this issue for purposes of interim relief.

telephone conference call. On the return date, the parties agreed to try to settle this matter. When it ultimately did not settle, a second return date was scheduled for May 29, 2014.

The NTU filed an opposition brief, a certification from John Abeigon, the Director of Organization for the NTU, and exhibits.

The NTU responds that the grievances it filed do not seek to abrogate the MOA, but rather, seek to enforce it. The NTU further asserts that the grievances have substantial merit and are not frivolous. With respect to the "unofficial CNA," the NTU responds that this is merely a "draft" booklet that was prepared by the NTU and distributed to its members, and that it accurately reflects the base salaries and salary increases as set forth in the MOA. Additionally, the NTU responds that the District has never presented the NTU with an alternate CNA for signature; the NTU has never held out its draft CNA, at any grievance arbitration hearing or any legal proceeding,<sup>5/</sup> as representing a mutually agreed upon document; and finally, that the District has made it clear to its employees via correspondence that it did not authorize the draft CNA.

The parties presented oral argument via telephone conference call on May 29, 2014.

---

<sup>5/</sup> During oral argument, counsel for the NTU stated that several of the nine arbitration hearings had already been scheduled, and during these hearings, the NTU did not introduce the draft CNA into evidence.

ANALYSIS

An interim relief decision is based on the facts in evidence which is provided by the certifications and exhibits filed by the parties. The parties' last CNA expired on June 30, 2010. The MOA is in effect until June 30, 2015. The NTU represents approximately 4500 of the District's employees including, but not limited to teachers, clerks and teachers aides. The NTU has filed nine grievances with respect to issues with the MOA. The District believes that the grievances are "frivolous" and are an attempt to abrogate the MOA in violation of the Act. The NTU believes that their grievances have substantial merit and are not frivolous and are an attempt to enforce the terms of the MOA. The NTU also unilaterally produced the draft CNA which was not approved or signed by the District,<sup>6/</sup> and distributed the document to over 4000 of its members on or about June 17, 2013. The draft CNA appears to resemble an official CNA that was approved by both the NTU and the District and looks like the previous CNA that expired on June 30, 2010. The draft CNA, provided by the District as an exhibit, however, on the last

---

<sup>6/</sup> The District asserts in the addendum to its unfair practice charge, at paragraph 18., that "Mr. Abeigon improperly used District's funds without authorization because he printed over 4000 copies of the Unofficial [CNA]." Neither Ms. Asante nor Mr. Abeigon have addressed this issue in their certifications and it is not referenced in the exhibits...it is also unclear why the District would pay for the mass printing of documents that it did not authorize.

page, has signature blocks for the District's Superintendent, Ms. Asante, the NTU's President and the NTU's Director of Research/Communication - no signatures are affixed to the document. The NTU has not introduced the draft CNA into any legal proceeding. The District informed their employees on two occasions via correspondence, on June 28 and September 23, 2014, that the NTU printed the draft CNA and that the document did not reflect the terms of the MOA because it combined the base salaries and the stipend into one amount. The NTU disputes that the draft CNA is inaccurate and asserts that it (the draft CNA) is a reference tool for NTU members but maintains that "The contract, however, is the MOA." The District has not provided the NTU with its version of a draft CNA for review and signature.

#### CONCLUSIONS OF LAW

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<sup>17</sup> 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

---

<sup>17</sup>/ Material facts must not be in dispute in order for the moving party to have a substantial likelihood of success before the Commission.



Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); Burlington Cty., P.E.R.C. No. 2010-33, 35 NJPER 428 (¶139 2009), citing Ispahani v. Allied Domecq Retailing United States, 320 N.J. Super. 494 (App. Div. 1999) (federal court requirement of showing a substantial likelihood of success on the merits is similar to Crowe); 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). In Little Egg Harbor Tp., the designee stated:

[T]he undersigned is most cognizant of and sensitive to the extraordinary nature of the remedy sought to be invoked and the limited circumstances under which its invocation is necessary and appropriate. The Commission's exclusive remedial powers, normally intended to be exercised subsequent to a plenary hearing, will not be called into play for interim relief in advance of such hearing except in the most clear and compelling circumstances.

The instant case involves two distinct issues: Whether both the filing of the nine grievances by the NTU and whether the unilateral printing and distribution of the draft CNA by the NTU constitute unfair practices under the Act.

With respect to the grievances, the Commission has stated on multiple occasions that filing a grievance is a fundamental example of protected activity. Camden Bd. of Ed., P.E.R.C. No. 89-78, 15 NJPER 94, 95 (¶20042 1989); State of New Jersey (Dept. of Human Services), P.E.R.C. No. 87-88, 13 NJPER 117 (¶18051

1987); Hunterdon Cty. Sheriff, P.E.R.C. No. 87-13, 12 NJPER 685 (¶17259 1986); Pine Hill Bd. of Ed., P.E.R.C. No. 86-126, 12 NJPER 434 (¶17161 1985); Dover Municipal Utilities Authority, P.E.R.C. No. 84-132, 10 NJPER 333 (¶15157 1984); Franklin Bor. Bd. of Ed., P.E.R.C. No. 81-126, 7 NJPER 248 (¶12112 1981); Lakewood Bd. of Ed. and Lakewood Ed. Ass'n, P.E.R.C. No. 77-73, [den. summ. judg.], 3 NJPER 313 (1977), P.E.R.C. No. 79-17, 4 NJPER 459 (¶4208 1978), aff'd NJPER Supp.2d 67 (¶48 App. Div. 1979); In re Dover Township Board of Education, P.E.R.C. No. 77-43, 3 NJPER 81 (1977).

In this case the District is asserting essentially that the filing of nine grievances by the NTU was in bad faith in an attempt to abrogate the MOA. In the context of the protected conduct of filing unfair practice charges, the Commission has found that absent evidence of filing charges as harassment, the mere filing of charges is protected conduct and not, in and of itself, an indication of bad faith. See University of Medicine and Dentistry of New Jersey, P.E.R.C. No. 2006-51, 32 NJPER 12 (¶6 2006); Mercer County Community College, P.E.R.C. No. 86-30, 11 NJPER 585, 586 (¶16204 1985), adopting H.E. No. 85-40, 11 NJPER 352, 361 (¶16127 1985); City of Cape May, D.U.P. No. 2006-8, 34 NJPER 204 (¶89 2006). In this matter, as set forth above, the NTU asserts that its grievances have substantial merit, are not frivolous, and seek to enforce the MOA rather than abrogate

it. Material facts are thus in dispute. This is a fact-intensive exploration that does not readily lend itself to a grant of interim relief. Additionally, the issue of whether or not the filing of grievances in bad faith can constitute an unfair practice, does not appear to have been considered by the Commission before based on the legal authority provided by the parties. An interim relief proceeding is not the appropriate application for creating new law.

Regarding the unilateral printing and distribution of the draft CNA by the NTU, the District relies on the following decisions in support of its unfair practice charge: Barneгат Tp. Bd. of Ed. and Barneгат Fed. of Teachers, P.E.R.C. No. 87-131, 13 NJPER 351 (¶18142 1987), aff'd NJPER Supp.2d 189 (¶167 App. Div. 1988), where the Commission held that the Federation violated the Act when it refused to sign a contract which reflected the agreement of the parties that the salary guide would not maintain salary differentials for certain employees; Moorestown Tp. Bd. of Ed., P.E.R.C. No. 94-120, 20 NJPER 280 (¶25142 1994), where the Commission held that the Association violated the Act by refusing to sign a collective negotiations agreement with language in the final agreement that was identical to the language in the MOA ratified by the parties; and Washington Tp. Bd. of Ed., P.E.R.C. No. 2011-32, 36 NJPER 401 (¶155 2010), where the Commission held that the Board violated the Act, when it sought to enforce a

final CNA with the Association that included changes in a seniority provision that was not included in the parties' MOA.

However, in this case, as set forth above, the District has never presented the NTU with its version of the CNA for review and signature even though the MOA was signed by the parties in October 2012 and ratified in November 2012. Under the facts of this case, it is not even clear if the NTU potentially committed a violation of the Act with respect to the printing and distribution of the draft CNA. Based on the legal authority cited by the parties, this specific issue does not appear to have been considered by the Commission before. As set forth above, an interim relief proceeding is not the appropriate application for creating new law. Given the heavy burden required for interim relief and based on the facts of this case and the legal authority cited by the parties, I believe this is a matter of first impression that requires consideration by the full Commission. See, City of Paterson, P.E.R.C. No. 2006-50, 32 NJPER 11 (¶5 2006); City of Newark, I.R. No. 2002-2, 27 NJPER 393 (¶32145 2001).

Additionally, since the NTU is not attempting to enforce the draft CNA and the District has informed its employees of its concerns with the language in the document, I find that the District will not suffer irreparable harm if the requested relief is not granted at this time. If appropriate, the Commission will

be able to order a complete remedy at the conclusion of the unfair practice litigation.

Accordingly, based on all of the above - because material facts are in dispute, and it appears to be a matter of first impression and that the District has failed to establish that it has a substantial likelihood of prevailing on the merits in a final Commission decision or that it would be irreparably harmed, its application for interim relief is denied.<sup>8/</sup>

The charge will be forwarded to the Director of Unfair Practices for processing.

ORDER

IT IS HEREBY ORDERED, that the Charging Party's application for interim relief is denied and this matter will be returned to the Director of Unfair Practices for further processing.



---

David N. Gambert  
Commission Designee

DATED: June 19, 2014

Trenton, New Jersey

---

<sup>8/</sup> As a result, I do not need to conduct an analysis of the other elements of the interim relief standard.