

I.R. NO. 2001-6

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF SAYREVILLE,

Respondent,

Docket No. CO-2001-132

SAYREVILLE PBA LOCAL NO. 98,

Charging Party.

SYNOPSIS

Sayreville PBA Local No. 98 filed a grievance contesting the Borough of Sayreville's issuance of a written reprimand to a member of the collective negotiations unit. The PBA repeatedly requested that the Borough provide it with certain specified information which it sought in preparation for an upcoming arbitration in that matter. In response, the Borough provided the PBA with a report but otherwise refused to provide additional information sought by the PBA on the grounds that such information was confidential. The Commission Designee found that the unfair practice charge appeared to have been untimely filed. Additionally, the Designee found that since the PBA did not have an absolute right to information and since the Borough was not required to provide the PBA with confidential information, it had not established a substantial likelihood of success on the merits. Further, the Designee found that the PBA had not established that it would be irreparably harmed since it could apply to the arbitrator to obtain appropriate information and, if the Commission ultimately found that it was entitled to the sought information, it could order, as a remedy, a new hearing before the arbitrator.

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Appearances:

For the Respondent, Apruzzese, McDermott, Mastro & Murphy, attorneys
(Robert J. Merryman, of counsel)

For the Klatsky & Klatsky, attorneys
(David J. DeFillippo, of counsel)

INTERLOCUTORY DECISION

On November 15, 2000, the Sayreville PBA Local No. 98 (PBA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the Borough of Sayreville (Borough) committed an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), by violating N.J.S.A. 34:13A-5.4a(1), (2), (3) and (5).^{1/} The unfair practice charge

^{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. (3) Discriminating in regard

was accompanied by an application for interim relief which was perfected on November 28, 2000. On November 30, 2000, an order to show cause was executed and a return date was scheduled for December 27, 2000. The parties submitted briefs, affidavits and exhibits in accordance with Commission rules and argued orally on the return date.

Ronald Batko is employed by the Borough of Sayreville in its police department and is a member of PBA Local No. 98. During the fall of 1999, Chief of Police John B. Garbowski issued a letter of reprimand to Sergeant Batko^{2/} upon completion of an internal affairs investigation which alleged misconduct on or about April 29, 1999. In accordance with the collective agreement, Batko filed a grievance challenging the reprimand. Since the parties were unable to resolve the grievance, the dispute proceeded through the steps of the grievance procedure and is pending a hearing before an arbitrator on January 23, 2001.

1/ Footnote Continued From Previous Page

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."

2/ Batko was promoted from sergeant to lieutenant in the spring of 2000.

In connection with the grievance filed by the PBA on Batko's behalf, counsel for the PBA made repeated requests to the Borough for certain specifically identified discovery, specifically including the complaint referred to in Batko's reprimand and correspondence between members of the Sayreville police department and the Middlesex County Prosecutor's Office. In response to those requests, the Borough provided the PBA with a copy of an Internal Affairs Investigation Report dated October 13, 1999, containing summaries of information gathered in an internal affairs investigation targeting Batko. The Internal Affairs Investigation Report was relied upon by the chief to issue Batko's written reprimand. On December 8, 1999, and reiterated on January 18, 2000, the Borough advised the PBA that the internal affairs investigation report would be the only document it intended to provide to the PBA and that no other materials would be made available. The Borough asserts that the information sought by the PBA is confidential. It relies on the Internal Affairs Policy and Procedures directive issued by the New Jersey Attorney General and the Borough's internal affairs policies and procedures memorandum issued by former Chief of Police Douglas A. Sprague in support of its argument that the additional information requested by the PBA is confidential. The PBA made additional requests for the discovery it had initially sought on March 3 and November 2, 2000. The Borough has refused to make any additional information available to the PBA.

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).

N.J.S.A. 34:13A-5.4c provides, in relevant part, the following:

...no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the 6-month period shall be computed from the day he was no longer so prevented.

As previously stated, the Borough advised the PBA in correspondence dated December 8, 1999 and January 18, 2000, respectively, that the internal affairs investigation report was the only document it intended to provide in response to the PBA's request for information. Thus, the PBA was clearly on notice as of January 18, 2000, that the Borough was refusing to issue additional documents sought pursuant to the PBA's discovery request. While counsel for the PBA laudibly continued to attempt to obtain the

additional documents in an effort to informally resolve the discovery dispute, such efforts do not change the express language contained in the statute establishing a six month limitations period for the filing of an unfair practice charge. Consequently, the charge appears to be untimely filed. Such untimely filing interferes with the PBA's ability to demonstrate that it has a substantial likelihood of prevailing in this matter.

It is well settled law in New Jersey that a public employer generally has a statutory duty to provide a majority representative with information relevant to an employee organization's representational duties and contract administration which includes grievance processing. Failure to provide such information may be a refusal to negotiate in good faith. See, University of Medicine and Dentistry of New Jersey, 144 N.J. 511 (1996); UMDNJ (School of Osteopathic Medicine), P.E.R.C. No. 93-114, 19 NJPER 342 (¶24155 1993); NJ Transit Bus Operations, Inc., P.E.R.C. No. 89-127, 15 NJPER 340 (¶20150 1989). However, it is clear that a union's right to receive information from an employer is not absolute. Thus, the information sought by an employee organization must be potentially relevant to the case at hand. State of New Jersey (OER), P.E.R.C. No. 88-27, 13 NJPER 752 (¶18284 1987), recon. den. P.E.R.C. No. 88-45, 13 NJPER 841 (¶18323 1987), aff'd. NJPER Supp.2d 198 (¶177 App. Div. 1988). Also, the employer's duty does not require the production of documents held to be confidential. Detroit Edison Company v. N.L.R.B., 440 U.S. 301, 100 LRRM 2728 (1979).

In this matter, the Borough argues that the PBA is seeking to obtain confidential information through its discovery request. In New Jersey Department of Treasury, P.E.R.C. No. 97-32, 22 NJPER 372 (¶27196 1996), the Commission refused to enforce an order directing the employer to provide documentation sought by a union in the context of a discovery request made pursuant to a grievance filed to contest a disciplinary action. The employer refused to disclose such documents on the grounds that they contained confidential information. The Commission held that an employee organization's "...statutory right to receive [the] report is not so clear at this point that the employer should be required to surrender it before its confidentiality concerns are considered in a final decision." Id. at 375. Accordingly, I find that the PBA has not established an absolute right to the material it seeks in discovery. Pursuant to the Internal Affairs Policy & Procedures directive issued by the New Jersey Attorney General and the Borough's own internal affairs policies and procedures memorandum, the additional documents sought by the PBA may be confidential and, therefore, may not appropriately be available to the PBA. In light of the foregoing, I find that the PBA has not established that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations.

I find that the PBA has not established that it will be irreparably harmed if its requested relief is not granted through this proceeding. N.J.A.C. 19:12-5.10 states that a grievance

arbitrator has subpoena power in accordance with N.J.S.A. 2A:24-1 et seq. Indeed, the grievance arbitrator may be better equipped to identify the potentially relevant information which should be provided to the party making such a request. To ensure that no party is prejudiced by not having adequate information necessary to prepare and present its case, it may be appropriate for the arbitrator to conduct a hearing on such procedural matters before addressing the underlying merits of the dispute. Since the PBA has the option to seek subpoenas duces tecum from the arbitrator before the hearing on the merits takes place, it is clearly not irreparably harmed as the result of the denial of its requested relief at this juncture.

Moreover, as the Commission noted in New Jersey Department of Treasury, an employee organization normally has an adequate remedy available to it by proving that it had a statutory right to receive the requested information and may seek a new grievance hearing after obtaining such wrongfully denied information as a remedy in an unfair practice case.^{3/}

Under these circumstances, the PBA has not, at this early stage of the dispute, established that it has either a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations or that it would suffer irreparable harm,

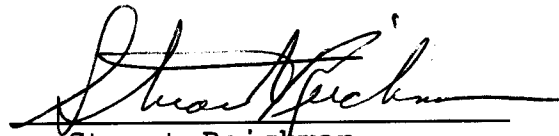
^{3/} In this particular case, since there is a threshold issue of timeliness, the PBA may not be able to pursue this unfair practice charge.

requisite elements to obtain a grant of interim relief.

Consequently, I decline to grant the PBA's application for interim relief. This case will proceed through the normal unfair practice processing mechanism.

ORDER

The PBA's application for interim relief is denied.

A handwritten signature in black ink, appearing to read "Stuart Reichman", written over a horizontal line.

Stuart Reichman
Commission Designee

DATED: December 29, 2000
Trenton, New Jersey