

I.R. NO. 96-6

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TURNPIKE AUTHORITY,

Respondent,

-and-

Docket No. CO-96-45

LOCAL 194 IFPTE, AFL-CIO,

Charging Party.

SYNOPSIS

Local No. 194, IFPTE, AFL-CIO, sought information from the New Jersey Turnpike Authority in response to certain proposals offered by the Authority during the course of successor collective negotiations. The information sought by Local 194 pertained to a comparative productivity survey, overtime costs experienced in the second quarter of 1995, and the Authority's projections for overtime cost savings if temporary employees replace regular employees out of work due to illness. Local 194 sought interim relief compelling the Authority to provide such information. A Commission Designee denied Local 194's application for interim relief regarding the comparative productivity survey and the Authority's projections for overtime cost savings resulting from the use of temporary employees. The Designee ordered the Authority to provide the overtime information for the second quarter of 1995.

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Appearances:

For the Respondent, Schwartz, Tobia & Stanziale, attorneys
(Frank R. Campisano, of counsel)

For the Charging Party, Rafano & Wood, attorneys
(Robert C. Rafano, of counsel)

INTERLOCUTORY DECISION

On August 14, 1995, Local No. 194, IFPTE, AFL-CIO (Local 194) filed an unfair practice charge against the New Jersey Turnpike Authority (Authority) alleging that the Authority has engaged in an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), specifically sections 5.4(a)(1) and (5).^{1/} The parties are

^{1/} These subsections 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. (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."

currently engaged in collective negotiations for a successor agreement to the one which expired on July 2, 1995. During the course of those negotiations, the Authority has proposed certain changes regarding productivity and overtime. In response to the Authority's proposals, Local 194 has requested that the Authority provide it with certain information.

Local 194 has requested that the Authority provide a comparative survey of the number of toll collectors and vehicles processed during various calendar periods for the Massachusetts Turnpike Authority, the New York Thru-Way, the Pennsylvania Turnpike Authority and the New Jersey Turnpike Authority. Local 194 states that the information is needed to perform a productivity analysis for toll collectors on the New Jersey Turnpike relative to collectors employed by the other roadway authorities.

The Authority asserts that the productivity information sought by Local 194 is not in its possession. In Shrewsbury Board of Education, P.E.R.C. No. 81-119, 7 NJPER 235, 236 (¶12105 1981), the Commission stated "in NLRB v. ACME, 383 U.S. 432, 87 S.Ct. 565 (1967), the Supreme Court declared that the majority representative has a right to relevant information in the possession of the employer." (Emphasis added.) There is no evidence that the Authority possesses the productivity information for any of the roadway authorities other than, perhaps, the Authority itself.

Local 194 has requested that the Authority provide it with information indicating the amount of overtime cost increase or

decrease in the second quarter of 1995 as compared with the second quarter of 1994. In its minutes for the first quarter of 1995, the Authority operating expenses show an approximately \$700,000 decrease in overtime costs (CP-1). The second quarter of 1995 ended on June 30, 1995. The Authority skipped the regular July 1995 meeting, however, it met in August, 1995. The minutes reflecting the August, 1995 meeting do not contain overtime cost information.

"An employee representative is entitled to information which helps it to properly represent employees." Lakewood Bd. of Ed., I.R. No. 95-22, 21 NJPER 233 (¶26149 1995); Shrewsbury Bd. of Ed. "The [NLRB] has consistently upheld the right of the Union to obtain information that it needs to bargain intelligently." The Developing Labor Law at 679 (3rd Edition 1992).^{2/} The Authority has already publicly disclosed overtime cost information for the first quarter of 1995 as an element of its operating expenses. The increase or decrease in overtime costs is relevant to an employee's representative responsibility to conduct collective negotiations on behalf of its members. Providing Local 194 with overtime information on an annualized basis does not adequately meet the Union's need for current, relevant data showing the direction of overtime costs.

^{2/} The Commission has long been guided by federal precedent interpreting the Labor Management Relations Act in its application of the New Jersey Employer-Employee Relations Act. See Lullo v. International Association of Firefighters, 55 N.J. 409 (1970).

The Authority has proposed the use of temporary employees to replace regular employees on long-term disability. The Authority believes that such replacement would reduce overtime costs. Local 194 seeks information relative to the amount of overtime savings, if any, that might be achieved by the use of such temporary employees. However, the record is not developed regarding the nature of the information request made by Local 194. The Authority contends that it has already provided Local 194 with the number of employees on long term leaves due to illness or disabilities covered by Workers' Compensation for calendar years 1993 and 1994. The Authority argues that to the extent Local 194 seeks to obtain its projected overtime cost savings from the use of temporary employees, such projections constitute confidential and privileged work product of the Authority relative to its own internal analysis of the overtime cost savings issue.

Local 194 asserts that the information which the Authority has already given it is not what it requested and cannot be used to extrapolate overtime cost saving resulting from the use of temporary employees. The information provided only shows the total number of days an employee is out of work due to illness for the calendar year, rather than the number of consecutive days out for each illness. Local 194 points out that under the proposal, a temporary employee does not replace the regular employee until the ill employee has been out of work for a pre-defined number of consecutive days.

An employer is not obligated to disclose confidential information. Burlington Cty., H.E. No. 88-43, 14 NJPER 211, 213 (¶19076 1988), adopted P.E.R.C. No. 88-101, 14 NJPER 327 (¶19121 1988). See also Detroit Edison Co. v. NLRB, 440 U.S. 301, 100 LRRM 2728 (1979). Thus, the Authority is not required to disclose its overtime cost savings projections, since they may constitute internal work product which relates to its confidential negotiations strategy. However, specific requests designed to obtain the number of employees out of work for a given number of consecutive days, rates of pay for temporary and permanent workers, and related requests for raw data which Local 194 could then use to develop its own projections on overtime cost savings clearly would be obtainable from the Authority if specifically requested.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the courts when addressing such applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered.^{3/}

^{3/} Crowe v. DeGioia, 90 N.J. 126 (1982), Township of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Township of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 37 (1975).

With regard to the comparative productivity survey, I find that Local 194 has not demonstrated that it has a substantial likelihood of success on the law. The Authority has no obligation to provide Local 194 with information that is not in its possession. Nor is the Authority required to undertake a survey to obtain such information.

With respect to the disclosure of overtime cost increases or decreases in the second quarter of 1995 as compared with the second quarter of 1994, I find that Local 194 has met the Commission standards entitling it to relief. The second quarter overtime cost data is necessary for and relevant to the ongoing negotiations process. Local 194 has demonstrated that it has a substantial likelihood of success on the legal and factual allegations in a final Commission decision. The information sought is "of the moment" and irreparable harm will occur if the requested relief is not granted. Further, in consideration of the relative hardship to the parties, it is clear that little hardship accrues to the Authority by providing such relevant information to the Union. Indeed, the Turnpike has already disclosed the amount of overtime cost savings experienced during the first quarter of 1995.

Regarding the overtime savings projections by the Authority through the use of temporary employees replacing regular employees on leaves due to illness, I find that Local 194 has not met its heavy burden in an interim relief proceeding to establish that it has a substantial likelihood of success on the legal and factual

allegations. Further, on this issue, the relative hardship weighs in the favor of the Authority since such overtime savings projections may constitute internal work product relating to its confidential negotiations strategy. Consequently, I deny the application for interim relief on this issue, without prejudice to Local 194 formulating more specific requests consistent with this decision.

Accordingly, I **ORDER** the Authority to provide Local 194 with the amount of overtime cost increase or decrease experienced during the second quarter of 1995. With respect to the other elements of Local 194's application for interim relief, the application is denied.



Stuart Reichman
Commission Designee

Dated: September 20, 1995