

I.R. No. 86-23

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
SALEM COUNTY,

Respondent,

- and -

Docket No. CO-86-338

COMMUNICATIONS WORKERS OF AMERICA,

Charging Party.

SYNOPSIS

A Designee of the Public Employment Relations Commission entered an Order prohibiting Salem County from refusing to negotiate with the Communications Workers of America if the President of Local 1041 appears as part of the C.W.A. negotiations team.

The New Jersey Constitution, at Article 1, Paragraph 19, provides that public employees have a right to present proposals to their employers through representatives of their own choosing. N.J.S.A. 34:13A-5.3 has implemented this constitutional provision and accordingly, an employer cannot refuse to negotiate with any representative chosen by the majority representative.

This is an interim order pending a final resolution of this matter by P.E.R.C.

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Appearances:

For the Respondent,
(Daniel A. Zehner, Esq.)

For the Charging Party,
(Steven P. Weissman, Esq.)

INTERLOCUTORY DECISION

On June 11, 1986, the Communications Workers of America, AFL-CIO (Union) filed an Unfair Practice Charge with the Public Employment Relations Commission (Commission) alleging that Salem County violated §5.4(a)(1) and (5) of the New Jersey Public Employment Relations Act, N.J.S.A. 34:13A-1, et seq (Act) when it refused to negotiate with the Communications Workers of America if the President of Local 1041, Oscar Abernathy, was present at the negotiations table. The unfair practice charge was accompanied by an Order to Show Cause and a request for Interim Relief. A Show Cause Order was made returnable for June 13, 1986 at which time both parties were given an opportunity to argue orally, present affidavits and submit briefs. At that time, I entered an order

restraining the County from refusing to negotiate with the designated representative of the C.W.A., Oscar Abernathy.

The County does not dispute that it refused to negotiate with Abernathy. Rather it maintains that Abernathy is currently on suspension from the County and that his appearance at the negotiations is affront to the County. Mr. Abernathy has been charged with striking his foreman, Francis L. Hogate, with his fist during an argument while on the job.

The Association argues that it has an absolute right to have any representative of its choosing at the negotiations table and Mr. Abernathy's status as an employee and his personal conduct is irrelevant to this right. The C.W.A. also disputes the facts of the suspension and has filed an unfair practice charge with the Commission (Docket No. CO-86-332) alleging that Abernathy's discharge was for protected activity under the Act.

The New Jersey Constitution at Article 1 Para. 19 provides that public employees have the right to present proposals to their employers and make known their grievances "through representatives of their own choosing."

In Dover Twp., P.E.R.C. No. 77-43, 3 NJPER 81 (1977) the Commission held that §5.3 of the Act implemented this constitutional provision through the use of majority representatives selected by the employees in an appropriate unit. See also, Borough of Bradley Beach, P.E.R.C. No. 81-74, 7 NJPER 25 (¶12010 1980); No. Brunswick Bd. of Ed., P.E.R.C. No. 80-122, 6 NJPER 193 (¶11095 1980).

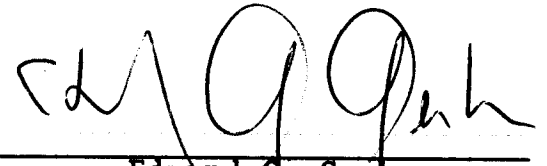
Contrary to the position of the Union, it may not have an absolute unfettered right to have anyone it so chooses represent it in negotiations. 5.4(b)(3) of the Act makes it an unfair practice for an employee organization to refuse to negotiate in good faith with a public employer. Opprobrious conduct on the part of an employee representative might strip an employee representative of this right. However, here the conduct of Abernathy is unrelated to protected activity and its very existence is disputed and seems to be an isolated incident. The Union has a right to be represented at negotiations by Abernathy and his status as an employee is irrelevant.

The employer's conduct in denying access to the union representative during negotiations has a chilling effect on negotiations. The New Jersey Supreme Court has held that parties must have a certain equality during the course of negotiations. Galloway Twp., 78 NJ 1 (1978) and also State of New Jersey, I.R. No. 82-2, 7 NJPER 532 (¶12235 1981). That equality at the negotiations table was disturbed when the County refused to negotiate with the Union's designated representative.

The C.W.A. met the two-fold test for the issuance of a restraint; the moving party demonstrated it has a substantial likelihood of success on the merits of its entire charge and there will be immediate and irreparable harm if the relief is not ordered..

This order is to remain in effect pending a final disposition of this matter before the full Commission. However, in

light of the serious nature of the allegations concerning
Abernathy's use of violence and without reaching any determination
thereto, I retain jurisdiction of this matter and if Abernathy does
exhibit similar violence during negotiations, I will be prepared to
vacate this order.^{1/}



Edmund G. Gerber
Commission Designee

DATED: June 16, 1986
Trenton, New Jersey

^{1/} It is understood that such accusations must be seen within the
context of the give and take of the bargaining table.